# HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

## (Management of the Superfund Clean-up Program)

(98-72)

# HEARINGS

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

MARCH 4, 9, 1983

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# HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

## (Concerning Management of the Superfund Cleanup Program)

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FRIDAY, MARCH 4, 1983

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:13 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

This morning the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will continue with its ongoing inquiry into the problem of hazardous waste contamination of water resources in the Environmental Protection Agency's efforts to carry out the $1.6 billion Superfund law for cleaning up hazardous waste sites.

Our witnesses today are Mr. William N. Hedeman, who is Director of the Office of Emergency and Remedial Response, which has the responsibility for, among other things, administering the Superfund's resources for the actual assessment and cleanup of hazardous waste sites.

And Mr. Gene Lucero, Director of the Office of Waste Programs Enforcement.

I noted a moment ago that today's session is part of an ongoing inquiry, and I want to expand on that for just a moment for the benefit of today's witnesses, as well as for those who have appeared before this subcommittee as part of this inquiry and for those who will be scheduled to appear in the weeks ahead which, by the way, will include Mr. Chip Wood, Mr. Robert Perry, EPA general counsel, Mr. James Sanderson, and the Administrator, Mrs. Anne Burford.

It is anticipated that the subcommittee will be calling on today's witnesses and these others I have just mentioned to appear before us for followup inquiries in the weeks and months ahead and it is my hope that we will receive their cooperation in this regard.

Of particular interest today are many issues and questions raised by Ms. Lavelle's testimony last week, in particular the matter of an EPA policy under Superfund of negotiating first and litigating second.

I also intend to explore certain questions that I have which stem from our review of a number of the initial documents that we have received under the February 18 agreement with the Department of Justice and the White House, and from briefings about these documents by EPA and Justice Department officials.

I also want to note that with reference to the tape of the EPA Justice department meeting, or the tape recording that was in part played at our last public hearing, the final minute or so which was played, at that time I announced in response to requests from committee members that I would make a transcript of that tape part of the record.

Following that announcement, the staff of this committee called to my attention certain matters that were covered by portions of the tape which were not disclosed at the hearing and suggested that the information of the sort that is on the tape was highly sensitive in nature and would have related to an ongoing enforcement action and suggested that that not be made a part of the public record.

Thereafter a letter was sent to me by EPA general counsel, Mr. Robert Perry, which, without objection, will be made part of the record at this point, indicating that there is a considerable amount of sensitive information on that tape which, if made public at this time, could jeopardize the integrity of pending litigation on the Stringfellow waste site.

Accordingly, for those reasons, the tape and the transcript of it which is being prepared will for the present be treated as confidential information and not be made a part of the public record.

[The information referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

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Subcommittee on Investigations
and Oversight
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OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

Honorable Elliott H. Levitas
Chairman
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On February 16, 1983, the Department of Justice released two tapes to your committee. The tapes were made of a meeting held in EPA's Region 9 offices on November 19, 1982. The purpose of the meeting was to critique the existing technical information on the Stringfellow site located in Glen Avon, California. The tapes were made for a member of my staff who was working on the case, but who could not attend the meeting.

The meeting had been scheduled in anticipation of settlement negotiations with the generators who had sent hazardous substances to the Stringfellow site. EPA planned to meet with the generators on December 16, 1982, to review the Stringfellow technical data.

The meeting attendees included personnel from EPA's technical offices, the Department of Justice, the California State Department of Health Services, and the Ecology and Environment consulting firm (list of attendees attached). The technical experts had been instructed to "play the roles" of the consultants who had been hired by the generators and to point out flaws in the existing technical information. Many technical and evidentiary deficiencies contained in the site reports and sampling data were discussed.

The tapes contain technical information which would be very damaging if it were introduced in a trial for the recovery of the past State remedial action expenses. In order to avoid this damaging disclosure, I request that extreme care be taken not to make a public disclosure of those portions of the tapes with enforcement sensitive information. My office is available to identify those portions of the tape which we feel would jeopardize our enforcement case if released. Frederick Stiehl, Deputy Associate Enforcement Counsel - Waste, is available to discuss this matter prior to any release of the tapes or their contents. Your staff may contact Mr. Stiehl at 382-3050.

Sincerely,

Robert M. Perry

Robert M. Perry
Associate Administrator and
General Counsel

Enclosure

## STRINGFELLOW TECHNICAL MEETING - NOVEMEBER 29. 1982
## LIST OF ATTENDEES

| | |
|---|---|
| Laurel Chun | EPA Region 9 Program Office |
| Kathleen Shimmin | EPA Region 9 Program Office |
| Harlan Agnew | EPA Region 9 Office of Regional Counsel |
| Barbara Grimm | EPA HQ, Office of Waste Programs Enforcement |
| Michael RW Green | U.S. Department of Justice |
| Alex Kennedy | California State Department of Health Services |
| Stan Phillippee | California State Department of Health Services |
| Reed Sato | Calif. State Dept. of Health Services - Legal |
| John Moe | Ecology and Environment FIT Contractor |
| Craig Saunders | Ecology and Environment FIT Contractor |
| Tim Banister | Ecology and Environment FIT Contractor |

Mr. LEVITAS. Of course, it is available to the members of the subcommittee and staff under the rules of the House. .

One other point. I had not anticipated commenting on this this morning, but in light of news reports I feel it is absolutely essential that some reference be made.

There is a news report this morning that the Justice Department has informed Mrs. Burford that it will no longer represent her in the pending matters relating to contempt of Congress and also, I am informed, nor further advising her with respect to withholding of information, EPA information from the Congress.

If that report is correct—and I understand that it is correct—I get the feeling that I am an invited guest at an "Alice in Wonderland" tea party and the Mad Hatter has just rushed in again with some more information.

It is my recollection and I am having our staff check the transcript right now, that in December of last year, when this committee subpoenaed Mrs. Gorsuch and called for the disclosure and the delivery of certain documents, that she sat at the table in front of me and next to her was an Assistant Attorney General who advised her not to turn over the information that we subpoenaed even though I had indicated that that could result in a contempt of Congress citation.

I recall further asking this Assistant Attorney General didn't he see some conflict of interest being created by advising Mrs. Gorsuch to handle this matter in the way she was handling it which could lead to the contempt of Congress citation and then be put in a position of having, as the Justice Department, to prosecute Mrs. Gorsuch.

I was told at that time that there was no problem. I will quote briefly from the transcript.

In response to my question about the possible conflict of interest that they might be creating, I said, and I quote:

> I am trying to inquire whether it is the Department of Justice's position that you may furnish information to Mrs. Gorsuch notwithstanding the fact that later prosecution for contempt may result from these proceedings and that furnishing such representation will neither inhibit nor prevent the Department from carrying out its statutory responsibilities?

Response by the Assistant Attorney General, Mr. Olsen:

> This is not the appropriate time for the Attorney General of the Department of Justice to make a determination as to who might represent an individual in a particular case or what particular case may be prosecuted under circumstances that have not yet developed.

I then went on to say:

> Therefore, it is your position, as I understand it, that the fact that you have advised Mrs. Gorsuch, as I understand it, concerning this matter and the Attorney General has, and your participation in these proceedings today would not prevent the Justice Department from discharging its statutory responsibility under the congressional contempt statute, if that should which we hope it will not eventuate?

To which he responded:

> We do not believe that anything we have done to date or intend to do at this hearing would jeopardize the ability of the Attorney General to discharge his responsibilities under the Constitution and the laws of the United States.

Thereafter, acting upon advice of the Justice Department at that hearing, Mrs. Gorsuch refused to turn over subpoenaed documents which did indeed result in the contempt of Congress citation. There is a criminal contempt pending now at the U.S. district court, and, as I say, the Mad Hatter now tells us that things have changed and contrary to advice given and the positions taken, they are no longer going to represent Mrs. Gorsuch.

I frankly, at this point, don't even know what to make of it except to say that it has got a most peculiar aroma.

The gentleman from New York, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. Chairman, I am at least equally as disturbed as you at the rather bizarre action of the Justice Department in the last 24 hours.

In our original attempts to get the documents from EPA, Mrs. Gorsuch wanted to deliver those documents to the committee. There is no question about that in my mind. She was prevented from doing so by the Department of Justice.

When this subcommittee—followed by the House contempt citation—held Mrs. Gorsuch in criminal contempt, the Justice Department refused to follow the law in bringing the matter before a Federal grand jury and operated instead to commence a civil action against the House, which, of course, it lost.

Now in a rather bizarre turn, Justice says they no longer are going to represent Mrs. Gorsuch.

I don't know if that means that Justice has now decided to represent the House of Representatives or whether it is just deciding not to represent anyone.

But the fact of the matter is, it is a very serious action.

We have lost many months and it appears that Mrs. Gorsuch whom I have called for her dismissal or resignation has been put in a box by the Department of Justice. After putting her in that box it is the Justice Department that also had the President invoke executive privilege and now suddenly the Department is abandoning ship and saying Mrs. Gorsuch and EPA, "You are on your own."

Well, I think there is a serious question, answers to which are owed to Members of Congress why we have wasted 5 months in pursuing all of this in a confrontational atmosphere. Now we are here today trying to pursue the job of this subcommittee and we find this latest turn of events.

So I join you, Mr. Chairman, I say that perhaps it is something we are going to have to look at closely and I think we should sit down and discuss this further.

I just want to mention one more thing before we get to the formal part of the hearing today and that is in reference to the tapes which you talked about.

For the record, it should be mentioned that the tapes in question that you alluded to were given to you before any agreement was reached to settle the dispute between the legislative and executive branches.

I can understand the sensitivities that might be involved but it is inappropriate for them to turn around now and say those tapes should not be released. The fact of the matter is, the tapes were given without any caveats whatsoever. I still don't know why they chose to surrender those tapes at the time, but certainly I don't want to be part of obstructing the prosecution of those who might be at fault in the case in question.

I think we should make clear that those tapes were not given in the same spirit as the sensitive documents by virtue of the agreement reached between yourself and the White House.

Mr. Levitas. Thank you, Mr. Molinari. Does any other member desire to make an opening statement at this time?

If not, we will proceed to hear testimony from the witnesses.

Mr. Hedeman and Mr. Lucero, if you would please rise to be sworn.

[Witnesses sworn.]

Mr. Levitas. Thank you very much, gentlemen.

In accordance with the—let me also observe once again, we are not making a special exception by administering the oath or giving you the advice I am about to give you. It is part of the routine procedure of this subcommittee to take all testimony under oath and to advise witnesses who testify of their rights to be represented by counsel and to have a copy of the rules of the committee before them.

Do you have a copy of the rules of the committee before you?

If they would be furnished to the witnesses at this time.

If you would desire to have counsel, you may do so.

I would like to start off—if you have a statement, any statements, either of you, feel free at this point to make those statements and we will get into the questions.

Mr. Hedeman?

## TESTIMONY OF WILLIAM N. HEDEMAN AND EUGENE LUCERO

Mr. Hedeman. Thank you, Mr. Levitas. I do not have a prepared statement.

I would like to make some opening remarks, however.

I compliment you in response to your remarks that you have arrived at the tea party. I have felt personally in this situation that I am still in the long hole, falling down and I am not sure where this is going.

But I stand ready to respond to any questions that this committee has to help deal with the issues that have emerged over the last several months on this question and I do that for a variety of reasons, but the most important one is to get to the real issue at hand which is the very difficult problems we are having with hazardous waste and the cleanup of that in this country, and the struggle that I, in managing that program, am personally experiencing through this situation.

Last evening I appeared on "Night Line" to discuss a topic that was different than had been represented to me when I was asked earlier in the afternoon and it got very much to the entire question of the documents.

I am speaking personally about this as opposed to any agency position or administration position.

In my opinion—and I am saying this as an attorney—the issue emerged initially as one of executive privilege, which is one constitutional question of many that I recall studying in law school, and for someone who has studied the law, it is an intriguing legal issue.

I think both the legislative and the executive branches have had their positions well represented by counsel on that, but now we are today at a different sphere. As I read constitutional law in law school, it was my impression that the Constitution was founded on one very basic principle and that is the public trust and the trust by the public that it would be carried out in the way that the public would best be served.

That is the atmosphere that I think everybody involved in this issue must now approach. That the leadership, both in the legislative and the executive branches, have got to come to grips with the fact that the majority of the public doesn't understand what executive privilege is or any other major esoteric constitutional concept.

What they do understand is that hazardous waste in this country is a very major problem and needs immediate attention.

I have to tell you, as the manager of this program, that the agreements that have been worked out to date with your committee are seriously draining my resources and very frankly have crippled the effort that I have tried to make in this program, and that we are reaching the point in which I think paralysis as opposed to crippling will occur.

The Administrator, in the hearings I have been with her at in the last 3 days before the House Appropriations Committee, has advocated that all documents be produced to any committee requesting them with the caveat that the committees and their staff exercise confidentiality.

While I am not in a position to speak for the administration on that, I can tell you that I personally advocate that approach because I believe it is the necessary step that has to be taken so that I and other officials within the agency who are in charge of Superfund can begin to deal with the issues of public trust that have emerged throughout this and respond to them, and also tell you about the very serious problems we are having in administering this law.

That would conclude my opening remarks, Mr. Chairman, and I appreciate the opportunity to make them.

Mr. LEVITAS. I thank you for your statement, Mr. Hedeman.

I am going to have something to say about that in just a moment. Indeed, you anticipate me.

Before I do, however, I think it would be appropriate to let Mr. Lucero make a statement if he so chooses.

Mr. LUCERO. Thank you, Mr. Levitas.

It is difficult to follow Mr. Hedeman's statements because they say so eloquently what I also would like to say. Perhaps more than him, since I was responsible within the Office of Solid Waste and Emergency Response in managing this process, that is the enforcement sensitive process, and I can testify on behalf of myself and my staff that the process has brought the tea party to our office.

I don't think anybody appreciates it as much as we do inside the office. I have been observing my staff. I have been observing what they have had to give up doing to manage the documents. We reached the point where I think maybe a quarter to a half of our time is now diverted to an enforcement sensitive document management process.

That diverts our efforts from the development of administrative orders, from support of ongoing litigation, for the development of new cases, and for cost recovery actions which I consider to be a part of a Comprehensive Enforcement Program in the hazardous waste area.

Unfortunately, that seems to be the impact. In addition, beside the difficulty of managing all of this paper and the process that we have set up for ourselves, we find ourselves, as Mr. Hedeman said, that questions of trust have been raised and it is extremely difficult for my staff.

Most of my staff has been at the agency for several administrations; most of them have been in this job for 4 or 5 years. They have been working extremely hard trying to do what they thought was expected of them by the Congress and by the Administrators that they worked for and now they find that their own credibility, their personal integrity is called into question and they have no ability, I have no ability to provide the documents to begin to deal with those questions of integrity.

To try to respond to the questions, to try to respond to the questions from the media that says, "Well, did this happen or did that happen;" it just takes a great deal of my time.

It diverts me from being able to help my staff manage the processes that we have.

Again, as my personal opinion—and I have been on record both with Rita Lavelle and with members of OLEC—I thought a better way to have approached this process was to have worked out some sort of arrangement whereby we could have shared the documents early on.

I specifically remember at the first meeting that I had with the Administrator on the question of enforcement sensitive was on December 12 and I was invited to that meeting; that was a Sunday because it was suddenly realized that our office had a large number of these documents as well.

Prior to that time, she had been meeting with the Department of Justice and the Office Of Legal and Enforcement Counsel.

At that time we had asked the question, "Isn't there some way we can provide this information?" And I would tell you that the Administrator back then said, "Yes, I would like to have those questions answered," and she turned to Mr. Perry and said, "Can't we do something?"

Well, I mean it has taken your negotiations with the Justice Department to be able to make any progress in that light, but I would like you to know that we all have a great concern about this process and I am here today, I appreciate the opportunity and look forward to providing you any information that I can about some of the questions you raised in your opening statement because I don't think we have had an opportunity to have an open, balanced discussion of some of those issues.

Thank you.

Mr. Levitas. Thank you, Mr. Lucero, and I hope that in the course of today's hearing we will provide that opportunity as well as getting into some of the specific concerns that have been raised in recent weeks by testimony of other witnesses and documents which we now have available to us.

But I want to comment on both Mr. Hedeman and Mr. Lucero's statements about the documents and I will let Mr. Molinari speak for himself in just a moment because he and I have had a conversation about that within the last 48 hours.

At the time we reached an understanding with the administration about these documents which provided full access for our subcommittee to see everything and we have implemented that process, at the time we entered into those agreements it was my very definite belief that once the documents were totally disclosed to our subcommittee—as they have been in their pristine, unedited form—that it was then totally absurd; it was nonsense to impose burdens upon the administration to go through this convoluted process of editing and marking out and three-tiered reviews if at the end of the line we are going to see the documents anyway, which we have done.

I think it makes an awful lot of sense at this point—since we are going to see the documents anyway—to save the manpower resources of the administration and your offices in going through this process which does not keep anything away from us but simply imposes a burden upon you. There is no burden upon us.

I just sit back and wait until they have gone through the first part of the dog and pony show and I say, OK, now, let me see the document.

All that time and effort that has had to go on to pull this one out there and mark that through there and brief us about it—incidentally, the briefings have been extremely helpful. I hope we can continue to do that.

But that there is no longer any need to go through those processes and that the administration will now simply provide us the documents and we in discharge of our responsibilities, of our accountability, will treat those documents as they should be treated for purposes of implementing rather than interfering with the enforcement of this important law.

I hope that that message is carried back to whoever needs to hear it because we are going to see all the documents. We are seeing all the documents. We have all the information. There is no purpose now to be served any longer for the employees at EPA and at the Justice Department, to spend countless hours going through, for them, a meaningless exercise, because we have today total access, so I hope that there may be some benefit derived from having imposed this process upon the administration or having it be self-imposed now that there is a realization there is no need to do so.

If Mr. Molinari—as I say, he was one of the first who has raised this question—if he would like to add anything at this point.

Mr. **Molinari**. Just briefly, Mr. Chairman.

I am grateful for the statements that you both have made because it is a matter of deep concern to me. I recounted to Chairman Levitas the other day that indeed there is a great amount of time that is occupied by Justice and EPA officials in explaining the reactions and what it means. Now apparently that same system will be used for all the subcommittees. It really means that key personnel, both in EPA and in the enforcement division at Justice, are going to have their hands tied completely which is exactly the opposite of what this subcommittee was attempting to do.

So it is comforting to me to hear two officials in positions of trust at EPA make comments which support the kinds of things we have been saying for many months.

I hope that maybe we are starting to get to a point where we get all of this behind us and get on with the real job you alluded to before; that is, to try to see to it that the right thing is done to protect public health.

Thank you very much.

Mr. LEVITAS. Thank you, Mr. Molinari.

I might say that the views shared by Mr. Molinari and myself are also views that have been shared by and advocated by my colleague, the gentleman from New Jersey, Mr. Roe, who has likewise discussed this matter with us.

Mr. Roe, if you care to say anything at this point.

Mr. ROE. Yes; I do.

I find myself getting very much incensed as a citizen of this country and as a Member of Congress. This committee never started out, nor was it this Member's intention, nor anybody else's on this committee, of eliminating Mrs. Burford. I think that the tone in the way this is beginning to develop is reprehensible and doing enormous damage to the whole environmental movement in this country.

I really believe that.

When I say getting incensed, the substance of this committee—if I may, Mr. Chairman, from my point of view and I know you share this with me—we are not interested in removing anybody from public office. That is not the issue.

What is here unfolded by Chairman Levitas' intensive review of this issue, I don't want it to be covered up. I don't want the issue to be covered up and everybody is going to say now they are jumping on the bandwagon, if we get rid of Mrs. Gorsuch that the problem is going to go away and everything is going to be honkey-tonkey and the things are going to be all right.

I want to compliment you and your associate for coming here today and making the forthright statement you have made so far.

But I also want to say that as a member of this committee I am incensed with the articles that are appearing now in the New York Times, today I believe it was, and in the Washington Post this morning, where now the Attorney General comes back and said he is not going to represent Mrs. Gorsuch.

We didn't believe they should have begun it in the first place. It should never have gotten that far if people had used commonsense and judgment.

What was the committee looking for? The committee wasn't looking to be an adversary; the committee was looking to solve the problems of getting this program going and now here we have the meat of it, the guts, if you like. We are trying to stop poisoning our water supplies and create the right atmosphere to get the job done in.

I agree with the chairman and Mr. Molinari in the meeting we have had with Justice. They have begun to bring forth some light instead of all this smoke and glass which isn't achieving anything.

It is taking enormous time of this committee and enormous time of your staff to achieve those goals.

So, to that end I compliment you in that direction.

We have all agreed that to set up very many kinds of a Mickey Mouse situation where, you know, you show me this and I will show you that and no you can't see this. People on this committee represent millions of people. I represent 300,000 people in my State and I think that we have the right to know and my people have the right to know basically, as I see it, what the facts are, so we can make a judgment.

Having said that, I am not defending anybody or whatever, but I don't want to see anybody become the scapegoat and the whole issue goes away because the issue is what is important, not who did what to whom.

Having said that, one comes back and sees we have unfolded some very, very good basic data. There is one specific point I would like to get at.

As we have been receiving now the uncensored materials or have the ability to review redacted—that is a new word. I think I am pretty well educated, but I don't know where that word came from. What we are saying is the documents were censored and Congress couldn't see them and we have set up a procedure whereby we can see those documents.

That has served an enormous purpose already. The question is whether or not the agency should follow a direction of going into negotiated settlements of these programs and would it move the program faster if we negotiated a settlement or do we spend many, many years in court with hundreds of attorneys on one case alone?

I don't consider this to be a legal welfare issue at all. What we are trying to say is how do we speed up the process?

We have $1.6 billion, as I understand the issue, over a 5-year period to clean up at least and identify 12,000 potential hazardous ticking time bombs.

Is that a reasonable statement for me to make?

Mr. HEDEMAN. It is reasonable to say that you have $1.6 billion. Our estimates are that we cannot clean up more than 170 sites and I believe that that number is extremely high.

Mr. ROE. Isn't that a reasonable statement to make? Should Congress be moving to expand this law to provide additional funds in your judgment to do the job that ought to be done across this country?

Mr. HEDEMAN. I think this is an issue that Congress should be debating, yes.

Mr. ROE. The chairman has a process which I subscribe to and we will get into that in detail, but I think I have made my comment. We are going to get into ground water and I will get to my questions later.

Mr. LEVITAS. I appreciate the gentleman reserving that because, as we build the testimony this morning, that will fit in perfectly as we get into it.

At this point I would now suggest that Mr. Hedeman and Mr. Lucero each take a couple of minutes describing what their responsibilities are, what is your job, what do you do and a little bit of your background with the Agency so we know who we are talking to and the American people will understand what your responsibilities are.

Mr. Hedeman, will you go first?

Mr. **Hedeman**. Thank you.

I am rounding out my 15th year of Federal service. Beginning 10 years of that with the Army Corps of Engineers, where I served in a variety of legal capacities, ending in the last 3 years with the position of Assistant General Counsel for Environmental and Regulatory Programs.

In that capacity, I appeared before this committee on many occasions with respect to water projects and the section 404 program that I oversaw.

I went with EPA in January 1979 to head the Office of Federal Activities which is the office that is essentially a liaison with all other Federal agencies on environmental matters, including the section 404 program and assumed the position of Director of the Office of Emergency and Remedial Response on November 1, 1981, at Mrs. Burford's request.

I also am on the faculty of the George Washington University Law School, and I have been in that position for the last 10 years, teaching water law.

In that capacity, having fair appreciation for the problems of surface and ground water that not only this committee has dealt with in the context of water projects, but in also the context of hazardous wastes.

The Office of Emergency and Remedial Response is essentially the component of the Superfund Program that manages the disbursement of the funds for the sites that are on the national priority list and also the sites that come to our attention requiring emergency action.

An example would be the Louisiana train derailment that occurred back in December.

We do that in close coordination with Mr. Lucero's office, which he can describe shortly, so that the overall authorities of CERCLA, the Superfund law, can be brought into play at each site, recognizing, as I said to Mr. Roe, that there is a very finite amount of money in the trust fund to respond to a large number of sites that we have before us, and further recognizing that the national inventory of hazardous waste sites in this country under my responsibility at this time is a little over 15,000. We have attempted to work my part of the program and Mr. Lucero's part of the program in close tandem so that where sites can be addressed through enforcement to achieve cleanup, we proceed in that direction. Where that possibility in a near term manner fails, we can proceed with the fund.

I have, in trying to administer my part of the Superfund Program, encountered one very basic problem which, up until yesterday, I have not been able to share with the Congress.

Yesterday I brought this problem to the attention of the House Appropriations Committee, and I would like, in about a minute or for about a minute, to bring it to your attention.

Mr. **Levitas**. You can proceed and do that, I would like to hear it, I would also like to explain why you were not able to bring it to our attention before yesterday.

Mr. HEDEMAN. The forum simply has not been here to address the issue. It has been nobody's neglect, I think it is simply that the focus has been on documents as opposed to these issues.

The problem is that 42 of the 50 States simply do not have any or anywhere near adequate money for the 10-percent match required for funding a site on the national priority list, funding it in the sense of cleaning up the site.

Eight States do have some sort of funding mechanism that allows a continuing supply of money to be available to the States for this 10-percent match. Probably the model State in this regard is New Jersey because they were able to grab hold of the problem of hazardous waste very early on and move to establish a funding mechanism that essentially can intertwine with the Federal program.

And while that State has the largest number of sites on the national priority list—65—we are extremely successful in that State in moving ahead, indeed roughly 21 percent of all the money we have obligated to date has gone to the State of New Jersey.

Another 19 percent of the money has gone to the State of New York which happens to also be in that situation.

We have work under way using my program and the funds in the trust fund, at 65 sites. But the majority of those sites are in the Northeastern part of the country because those States were able to aggressively move to establish a funding mechanism to come up with the 10-percent match.

Roughly 25 percent of the sites on the national priority list are in the North/Central part of the country, Indiana, Illinois, Ohio, Michigan, where the country experienced a heavy industrialization during the 1950's and 1960's and 1970's and where the residues of that industrialization are now before us in the form of abandoned sites.

For all practical purposes in those States there is no funding mechanism. So the program is not moving well at all in the North/Central part of the country.

The issue is further compounded by the fact that weather in that part of the country prevents us from moving to rapidly correct the situation during 4 to 5 months of each year. I am not advocating that the 10-percent match requirement or the site is owned by the State or municipality, the 50-percent match requirement, is a mistake because I believe that the fundamental structure of the law that your committee and others in the Congress gave to us of the Federal-State partnership is absolutely essential to dealing with a problem of the magnitude that we have.

What I am saying, however, is that there are a number of other Federal programs including highways and construction grants and various other programs that this committee oversees that have come before the States and they have had little difficulty in coming up with the match.

I think the question that has to be addressed nationally is whether the State governments as the States of New Jersey and New York have done, are in a position to join in that partnership with the Federal Government to correct the situation. I am of the opinion that that has not occurred to date and I believe that that is the major cause for the delay that we are having in resolving this national problem.

Mr. LEVITAS. Thank you.

Would you, Mr. Lucero, describe your background and your present responsibilities.

Mr. LUCERO. Certainly, Mr. Chairman.

My training is as a lawyer and I began practicing as an attorney with the Denver Legal Services Organization in 1975 joining as an assistant attorney general for the State attorney general of Colorado where I was a trial attorney dealing with complex litigation, including environmental law.

In 1978 I came to Washington to work with ACTION/Peace Corps where I worked for approximately 2 years in a role that probably could best be described as Deputy Inspector General.

I had a number of different functions in addition to that.

Then in April 1980 I was selected to fill the position of Deputy Regional Administrator in EPA region 8 which is the region located in Denver and includes the six Rocky Mountain States around that center. In the month of December 1981, Mrs. Burford asked if I might consider coming to Washington to help her with certain jobs and she suggested a number of possibilities.

Mr. Hedeman and I talked—in fact I remember the discussion real well because I was taken to my favorite Mexican restaurant which he still remembers—in any event he worked out a deal where I came back in April 1982 to be his Deputy.

I served in that role until July 19, 1982, when Ms. Lavelle asked me to take an acting position as the Director of the Office of Waste Programs Enforcement. In January 1983 Mrs. Burford announced that she was appointing me to that position permanently and it was effective on February 28.

The Office of Waste Programs Enforcement is one of the three offices within OSWER, that is the Office of Solid Waste and Emergency Response, there is Mr. Hedeman's office, and my office and Mr. Skinner's office, the Office of Solid Waste which handles the program component of RCRA, the Resource Conservation Recovery Act.

I handle the technical personnel and the program and policy development specifically for RCRA enforcement and Superfund enforcement.

I am one of three parts of the Government, I would say, that participate—although there are many more—in the hazardous waste enforcement cases concerning abandoned hazardous waste sites. The other two components—this is a shared responsibility—no particular organization dictates policy or decisions—is with Mr. Perry's office, the Office of Legal and Enforcement Council, and in almost every case the Department of Justice as well.

A number of issues you raised about prelitigation negotiation and enforcement policy are things that we have been working on and I stand ready to answer your questions.

Mr. LEVITAS. Fine. I will ask the first question because it does get right into that. Then I will recognize other members so we can get to their questions.

I am speaking now only for myself, not trying to say what congressional intent is, but it is my understanding from the beginning that Superfund, the Superfund Program had a different mission and purpose from the preexisting legislation. Before Superfund ever came on the scene it was possible to negotiate with contaminators, people who had created hazardous waste sites for purposes of cleaning them up. That was possible.

Indeed it was even possible to litigate with them. You could sue them for doing the types of things we are talking about. It didn't take Superfund to do that.

I view the Superfund Program as an emergency response to serious situations, to provide a resource where the Federal Government, once having identified—or the State governments having identified—these particularly serious hazardous waste sites, could move in very expeditously—very quickly—and clean up the site. Then go to the people who were responsible for the contamination and say, "This is what it cost to clean up the mess you made. Do you want to pay for it?"

If they didn't want to pay for it, there were some very serious penalties that could be attached during the course of litigation: treble damages.

And there were other types of actions.

But the purpose of Superfund—unlike the preexisting world we were living in—was to create the means by which we could get on with the cleanup of the hazardous sites.

Now, Ms. Lavelle testified last week that the Agency's policy, which I consider to be different from what I have just described, was to—and I quote—"Negotiate first and litigate second." Here are my questions and if you want to take notes there are a series of questions and you may wrap them up in one series of answers.

First of all, do you agree this was the Agency policy? Is it still the Agency policy? Who advised you as to what the Agency policy was and is? Who established this policy? Who makes the decision whether to clean up or to sue or to negotiate?

Are there factors in the Superfund law that influence you as to whether you will clean up or sue or negotiate?

You have already made reference to the State matching share required by the law and the extent to which it may be a problem. You have referred to the fact that there is no specific funding mechanism. Can States appropriate money directly without a dedicated source in order to qualify?

Is the level of funds that are appropriated a constraint to this effort? How many sites do you expect that the program—given the present funding levels and the present structure of the law—how many sites do you expect can be cleaned up, say, through 1985?

How long is it going to take to clean up—this is a very important question—the 418 sites on the proposed priority list given the present funding levels and the structure of the law?

Mr. Hedeman, do you want to start?

Mr. Lucero, you can either join in or follow as you so desire.

Mr. HEDEMAN. I think I made notes of this but I am not sure now that I remember what the notes mean.

I think your perception of the law, Mr. Levitas, is correct but I would caveat that with certain real world problems. Our present projections are, as I indicated earlier, that we have money in the fund to address 170 sites. That is based on an average cost per site of $6.5 million.

Obviously, in some sites that is going to be radically below that amount; for example, in one in Baltimore that has been cleaned up the total cost is as I recall it about $400,000. Contrast that to the decision made at Times Beach last week where the permanent relocation alone is estimated to be costing $33 million.

It may well be our 170 number is optimistic and we will not have a feel for that for at least another year to a year and a half I believe.

It is in that atmosphere that the policy to use all the authorities of CERCLA evolved essentially to establish whether there are responsible parties that exist at some of these sites and whether there is an opportunity to get the site cleaned up through the negotiation process first so that we can focus our attention on those sites where responsible parties don't exist, have gone bankrupt or are dead, or have left the country—that seems to be the four categories they fit within.

I believe that the level of money that you have appropriated for us for fiscal year 1983 and fiscal year—and the level in the President's budget for fiscal year 1984 is adequate to continue under the circumstances that we are operating under in terms of funding.

But we will not be able to clean up that many sites by 1985.

As a national average we see that it is taking approximately 44 months to address and completely remedy a site. The reason for that is that at 347 of the 419 sites on the proposed national priority list we are dealing with ground water problems and Mr. Roe, I think in New Jersey that is particularly the situation.

We are often dealing with underground aquifers that not only themselves are contaminated but underneath that aquifer is a second aquifer or a third aquifer that may also be contaminated.

What is particularly difficult to deal with is the fact that the problem out of sight, has been until recently out of mind. It is very difficult from an engineering perspective to get a grasp on in terms of where is the aquifer, in what direction is the plume moving and how can you from the engineering perspective solve it.

Water moves in an annual hydrologic cycle and when you deal with ground water which is often unpredictable that cycle is unpredictable. So you have to make some judgments and the judgments hopefully are going to be correct once but they have to be based on fact.

It is taking approximately 1 year at many of these sites to do first investigations of the site, not only in terms of the number of drums that are on the site and the soil contamination but frankly the aquifer contamination.

And second, to identify alternatives which can correct the problem—alternatives which frankly are pushing the state of the art. At one site we are moving to construct 90-foot slurry walls below the ground to essentially stop the plume from moving and then for 3 to 5 years of pumping the water out of the aquifer, treat it and reinject it back into the system.

We hope that will work. I am using every available resource in the engineering community and the Army Corps of Engineers to advise me on that. But it is going to be a lengthy process.

Once the alternative is selected it takes anywhere from 6 to 9 months to design it, prepare bid specifications for it and get the bid package out on the street where we can receive bids and award the contract to the lowest bidder.

And then we get into the actual clean up. That may take anywhere from 2 to 3 years and if the remedy selected is one such as I described where you are treating the water the remedy may go on for 4, 5, 6 years or longer before we can adequately treat the water so that it is no longer contaminated.

Given that process and the fact that the average is 44 months, I cannot tell you that we will clean up 418 sites by 1985. What took the very——

Mr. LEVITAS. Wait a minute, Mr. Hedeman. I think you can. You can tell us that we will not clean up 419 sites.

Mr. HEDEMAN. That is—I agree with you.

Mr. LEVITAS. We will not clean up 419 sites by 1985.

Mr. HEDEMAN. That is correct.

Mr. LEVITAS. Can you estimate how long in your judgment—given present funding levels and the present law in addition to the technical problems you have just described—do you think it will take to clean up these priority sites?

Mr. HEDEMAN. Of the 100 to 170 priority sites, our budget projections are that we will spend most of the money in 1985, 1986 and 1987 and may well be into 1988 as well. But that—just to reemphasize—is only that subset of the 419 that the fund itself can deal with.

Mr. LEVITAS. Let me just take that one step further. I think it is very important that we understand what you are saying. Given the present funding level—and I heard at some point that officials at EPA were going to recommend that we not extend or renew the fund beyond 1985——

Mr. HEDEMAN. That is correct.

Mr. LEVITAS. That was reported several months ago, Mrs. Gorsuch indicated she didn't see any reason to extend it.

My question is just looking at 418—419 now that Times Beach has made the list, isn't it fair to say that those 419 sites will not be cleaned up before the end of this century?

Mr. HEDEMAN. Well——

Mr. LEVITAS. I am just using your figures.

Mr. HEDEMAN. It may be fair to say that. I just don't know. I have to relate my answer to specific sites. Let me go to Times Beach.

At this point in time our answer in Times Beach is not to move essentially 2,000 people out of the area and walk away but I don't know what the environmental solution is going to be at Times Beach.

Mr. LEVITAS. Now, if we add to all of that process negotiations that could extend for a long period of time—let me give you a specific example, Homestake, the New Mexico situation—the negotiations went on there for 2 years, just the negotiations went on for 2 years. That is before anybody is talking about the cleanup and in this instance I understand that the solution is to simply provide a new water supply because the existing water supply is for all intents and purposes gone forever; is that correct?

Mr. HEDEMAN. That is correct.

Mr. LUCERO. That is correct.

Mr. **Levitas**. What I am getting at, I am trying to put it out in a form that people, that the record will speak for itself, but what I am saying—and it is a point that Mr. Roe, my colleage has made time and time again—we are talking about 429 very serious hazardous waste sites, top priority, 419 sites, and we are perhaps not going to live to see those sites be cleaned up.

Mr. **Hedeman**. Before Mr. Lucero begins, I don't want to give the impression to this committee that the 419 sites are the most serious sites in the country. As we are having more and more of the ones brought to our attention—Times Beach is an example—the list is going to expand and frankly may reveal sites more serious that we don't now know about.

Mr. **Levitas**. That of course gives me no comfort. That makes the problem worse.

Yes, Mr. Lucero.

Mr. **Lucero**. Mr. Chairman, I would like to put this issue of negotiation in perspective because I think this is an important issue. I think there is a misperception. If there was a fundamental or primary objective of Superfund enforcement it was to maximize the dollars available for cleanup. It was not to allow those dollars to be held up, tied up or whatever. Let me take some time to explain how we tried to implement this.

As Mr. Hedeman said, his calculations from his program office show maybe 170 sites can be cleaned up using fund dollars. Our objective was to duplicate that and make another 170 cleanups occur through enforcement authorities that are available under the act and as far as we are concerned they are some of the best that the agency has.

The way we decided to implement that primary objective was fairly complex but let me take a minute to walk through it.

We have always known that to have a credible enforcement program you have to be willing to litigate or use administrative orders. There is no doubt about that. But we also knew that that is a very labor- and resource-intensive process. It is very expensive. Some of the cases that we are prosecuting now that have been in the works for 2 years have cost the Government in the neighborhood of $1 to $2 million and they will continue to go.

We took the position—and I have a statement I would like to share with you—that where there were cooperative companies who were willing to assume their responsibility before we choose that route, we wanted to give them an opportunity to do that.

Because it met our primary objective, it prevented in many cases having to use Superfund, and, as we mentioned already, we were looking to get up another 170 cleanups— that is our target—and we would need to look at this process.

What we developed in concept, and it's been difficult to implement, is what I call the pre-litigation negotiation strategy.

I have a statement which I prepared for Mrs. Burford and which I would like to give to you as well as read into the record.

Before I do that, I would like to take this time to make one thing also clear, that the development of this policy has been a multiple policy within the agency and within Justice. I would like to give Mrs. Burford credit that, as she began to understand this problem, she was willing to come back to us and to give Superfund enforcement—both at headquarters and the region—additional resources for 1983, and she has asked for the same level of resources in the President's budget in 1984.

We have a strategic plan which I am willing to share with you that shows you the outputs we felt we could make with those resources. I would like to share that at some time, maybe not today, which I think is very ambitious but I think was a level of activity that was expected of us.

It doesn't just focus on negotiations. That is only one of what I consider to be the four main elements of our enforcement strategy.

In addition to making a limited period of time to see if there were cooperative, responsible parties we could negotiate with, we have a component dealing with support of ongoing litigation and development of new litigation.

We have a component that deals with the use of administrative orders which are a condition precedent to any treble-damage claim and of which there is quite a bit of development going on in my office right now.

Third, and Mrs. Burford was probably most insistent about this, that we will seek to recover every possible cent that the Superfund Office expends through cost recovery as allowed under the act.

Those are the four major components.

Dealing with the negotiation strategy, and I think too much has been made of this because it is only one component and it fits within all of these other possibilities. I would like to provide for the record this statement which I did provide for Mrs. Burford and I would like to take a minute to read it because I think it will help at least map out the framework.

Mr. Levitas. Without objection, the statement will be made part of the record.

[The statement of Mr. Lucero follows:]

## CERCLA Enforcement
## Pre-Litigation Negotiation Strategy

The purpose of pre-litigation negotiation is to encourage cooperative responsible parties to clean up sites. Cleanup resulting from negotiation and settlement is likely to occur more quickly than cleanup resulting from litigation. In addition, private party cleanup will free Superfund dollars and make Federal and State technical and legal resources available for additional sites.

Negotiation can be particularly effective before litigation begins. The threat of litigation or administrative orders during pre-litigation negotiations gives the Federal government valuable leverage, because settlement would allow private parties to avoid the great expense and adverse publicity involved in litigation. This leverage is sacrificed if the Federal government automatically files cases before it begins negotiations with responsible parties. In addition, filing lawsuits before negotiations even begin alienates potentially cooperative responsible parties.

In the past, EPA has found that companies would adamantly oppose settlement discussions based on the government's theory that their liability was joint and several. In order to take advantage of greater cooperativeness before litigation, the Agency agreed that it would consider offers made on the basis of a "fair share," that is, an offer made to do the work necessary or, in lieu of that, to pay the cost of the work which is proportionate to the amount of waste the responsible party delivered to the site in question. Generally, the Agency will not settle on this basis on a company by company basis; rather, we would look to an offer which would remedy all or a significant part of the environmental problem. In addition, the Agency would not settle on this basis if it significantly reduced the likelihood of success for the remainder of the cleanup against the non-settling parties. Since these negotiations are complex and time-consuming, EPA generally tries to limit the negotiation time before litigation or issuance of an administrative order to between 60-120 days. X To date, this policy has operated within these guidelines.

"Fair Share" settlements have not been available once an enforcement action has been formally commenced.

Mr. LUCERO. Let me take a minute to read it. [Reading:]

> The purpose of prelitigation negotiation is to encourage cooperative responsible parties to clean up sites. Cleanup resulting from negotiation and settlement is likely to occur more quickly than cleanup resulting from litigation. In addition, private party cleanup will free Superfund dollars and make Federal and State technical and legal resources available for additional sites.
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I modify the statement because some of our more complex cases have taken longer, and I would like to say the last sentence: " '. . . Fair share' settlements have not been available once an enforcement action has been formally commenced."

At the time the action is commenced we operate on the basis that the responsible parties' liability is joint and several. We prosecute on the basis that a small percentage of the responsible parties can be responsible for the entire cleanup. We have been consistent on that basis for every lawsuit that we have considered filing.

That is how we are trying to manage that. I am not saying there are not exceptions.

The emergence of this concept has occurred since I have been in the Office of Waste Programs Enforcement. As you noted earlier, there were 2 and more years of negotiation in the cases the agency previously filed. It was clear we were not making progress.

The objective here was, again, to maximize the fund dollars but not to restrict or limit the enforcement opportunities. It was just to take advantage of what we thought was in the best interests of the Government at that time before we went to enforcement.

Now I would like to point out, in addition, there is one part of the law that we do focus on when we talk about meeting and discussing cleanup with the responsible parties that is in the Superfund law. That is at section 104(a) specifically the clause that concludes that subparagraph.

It basically says this; this section describes the responsible authorities given to the President, and it basically says that "the President can take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment," and this is the operative clause that we have focused on: ". . . unless the

President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates or by any other responsible party."

And while we still think this was a good policy, we think it is also supported by this language that suggests that we should at least give responsible parties an opportunity to propose a proper study.

Now, to do that, we have developed a very, unfortunately, elaborate process to not slow down Superfund cleanup. We generally refer to it as the dual track system. The original statement of that system is no longer operative. The reason for that is that it was based on having available facts and information at sites at the time that we don't have for the new sites on the expanded list.

It was possible on almost—on most of the 115 interim priority list sites—that we could be ready with these up-front discussions as soon as the fund was ready.

As we have moved to the larger list to the 418 sites, we know that there will still be a process where there will be some sites where responsible parties will indicate a willingness and an ability to clean it up, and we will have, still, a segment of dual track sites.

But the process that Mr. Hedeman and myself, through our staffs, have been attempting to work out is a means to identify which sites will be clearly fund cleanup and which sites will be clearly enforcement leads and get out of each others way.

In the case where he goes forward on a fund cleanup, assuming the States is ready and other information is available, our support will be primarily to do a cost recovery action at the conclusion of the expenditure of money.

Where we go forward with an enforcement case, our goal will be to force the responsible parties—if they are not willing to do it—to do the cleanup. If they do not respond to this offer, which we try to restrict to a narrow period of time, we will then consider either civil litigation or administrative orders.

The Administrator has asked me specifically to develop a process for the use of administrative orders because we are all under the belief that that is a condition which must be met before we can make any attempts to raise the civil penalty provision in CERCLA or the treble damages.

We have under development somewhere between 10 to 30 cases of administrative orders right now which we are trying to get this developed for.

That is the type of general enforcement policy we are trying to implement. There are a myriad of details that are being worked out and, as Mr. Hedeman said, the facts at each of the sites is different and requires a lot of additional work. But this has been worked out. I think I can say fairly that Mr. Perry's office, the Office of Legal and Enforcement Counsel, and the Department of Justice, agree with this basic approach, and we have been looking toward mechanisms to streamline it.

In particular, we are on the verge of reducing a lot of this to writing which has not been done previously because there was such pressure to get things done that that was one of the things that fell out. Now we know we need to do that.

Mr. **Levitas**. Thank you, Mr. Lucero. I am not going to make any comment because we are going to get into that later.

I will say with all respect that I don't agree with that philosophy that you described in that paper that you prepared for Mrs. Burford, for a number of reasons. But I guess at the heart of it is the fact that it doesn't take into account the—to the extent I think it should—the joint and several responsibility that these parties have when you are in that negotiation mode, which has taken too long in my opinion, to begin with.

But other members may want to get into that.

At this time I recognize the gentleman from New York, Mr. Molinari.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. Lucero, one of the last comments you made on enforcement strategy seems to run exactly contrary to what we have heard before, and I make particular reference to the statements that Mr. Perry's attitude was to litigate in almost each and every case rather than negotiate. Is that a fair statement as to his policy?

Mr. **Lucero**. I have not paid attention to all of Mr. Perry's statements, but what I am able to comment on, I think, is that development of this policy, as I have stated it, has involved Mr. Perry actively. And insofar as any particular—a lot of this policy was developed within the context of major cases originally.

Mr. Perry himself was one of the three final decisionmakers. There were essentially three, Ms. Lavelle, Mr. Perry, and Mrs. Dinkins at the Department of Justice. Mr. Perry agreed with this policy, as it was developed in those cases. So, to the extent that is inconsistent with what his statements are, I can't explain that.

Mr. **Molinari**. Ms. Lavelle said that she favored negotiation and settlement, and Mr. Perry wanted to litigate, litigate, litigate.

Let me ask you this question: What is to prevent your agency from commencing an action and continuing to negotiate?

Mr. **Lucero**. Nothing.

Mr. **Molinari**. Wouldn't that be the more prudent approach? You may spend a year or two negotiating and then find that you have not been able to effectuate a settlement. Wouldn't it make more sense to commence legal action, reserve your rights in the courts and to proceed on that basis?

Doesn't that give you more of a bargaining tool? I am a lawyer, and my own experience is that some parties indeed don't negotiate until they are at the courthouse door. This subcommittee, I might say, had a similar experience. We couldn't get any cooperation until we took some rather forceful action. Why can't you do both?

Mr. **Lucero**. Well, that is one way to approach it, and we have looked at it. Let me tell you what has affected our decisioning on the other side, that is, there is a very great interest in seeing if the problem can be resolved on the part of a large number of companies, from my experience, before litigation, for two reasons primarily:

One, that the corporate counsels are very concerned about the amount of money that their corporation will have to pay for outside counsel once litigation is commenced.

Second, there is a genuine concern in my opinion that those corporations will be harmed by being associated even if at the time they disposed of the waste it was in accordance with the state of the art or they were of the—they had given it to someone who was reputable and it went somewhere where they didn't believe it was going. They have indicated that the public response to it being associated with the site has a tremendous impact on them.

Using both of those as leverages we think gave us some leverage. There are additional leverages that we have had which can be available to us inside or outside the case. One of them, and the one we like to use the very best, is the threat that the fund will go do the work and we won't see them until after the work is done because they know that once the fund starts its cleanup we probably won't come back to them to talk.

Mr. MOLINARI. You had cases where you have instituted litigation and found out that when the moment of truth came when you had to go to court you were not prepared. Was the case prejudiced because you did not have adequate information at the time of trial?

Mr. LUCERO. I think it is fair to say there are a couple of cases where we have had problems with our position.

Mr. MOLINARI. How many cases have you litigated under Superfund?

Mr. LUCERO. As Mr. Perry has stated repeatedly, there are something like 51 hazardous waste cases that have been referred to the Department of Justice.

Mr. MOLINARI. How many are in the actual stage of litigation, do you have any idea?

Mr. LUCERO. I am not certain about this, sir, because I don't maintain those figures. I believe in the neighborhood of 37 to 41 active cases in litigation. But I will have to check that for you.

[The information follows:]

In response to a question to Gene A. Lucero, Director, Office of Waste Programs Enforcement: The number of Superfund enforcement cases as of March 4, 1983, that were referred to the Department of Justice in FY 83 was 26; the number of Superfund cases actively litigated in FY 83 was 26.

Mr. MOLINARI. One thing that I have not heard this morning and I hoped I would hear with the detailed statements, is emphasis on prevention. We look at the Times Beach site and accounts indicate that the company that created the dioxin could for less than $100,000 a year have legally disposed of that dioxin. Now just one stage of the so-called settlement, the buyout, is going to cost the Superfund $33 million.

The list grows every day, and of course some of us are very deeply concerned about that. I can't help but think our emphasis is perhaps somewhat wrong. Maybe we should spend more money with sophisticated investigation squads to detect these sites before the damage is done because in many cases it costs 100 times, 200 times more later on when you try to attempt to clean up after the fact. Even at that you never get 100 percent cleanup.

What is EPA doing in the area of prevention?

Mr. HEDEMAN. Well, that is the whole focus of the third component of the Office of Solid Waste and Emergency Response, under which Ms. Lavelle—which Ms. Lavelle headed, which essentially is the RCRA Program.

Mr. MOLINARI. I would like to get more specific. What are they actually doing? How many do they have out there trying to detect these problems?

Mr HEDEMAN. Because that falls within Mr. Lucero's area in the sense of inspections, let me ask him to respond.

Mr. LUCERO. In terms of the RCRA enforcement policy, what I would like to tell you—this is sort of a metaphor, an analogy I have used before. I have told people that in our strategic plan, which I am willing to share with you, shows that what we set up as a goal is not what I have said already about Superfund, but we knew also that we had to freeze the universe of new sites, new sites being created, and the mechanism to do that was through the RCRA enforcement.

And before I get to that let me just say I have likened it to the fact there are a number of red lights and blue lights. The red lights represent the abandoned hazardous waste sites, the blue lights represent facilities, transporters, generators, land disposal, whatever——

Mr. MOLINARI. Let me interrupt, if I may. I can see you can't answer this in a brief period of time. To expedite your answers would you furnish in writing to this subcommittee what EPA is doing in the area of prevention?

Mr. LUCERO. Certainly.

[The following was received for the record:]

### RCRA ENFORCEMENT PROGRAM DESCRIPTION—PREVENTION OF FUTURE SUPERFUND SITES

The safe handling of hazardous wastes was the factor missing during the first 40 years of the chemical revolution in the United States. While all Americans enjoyed the advantages of new products, casual, ignorant, or malicious disposal practices produced the hazardous waste sites that threaten the health and well-being of our people. A two pronged effort was necessary to clean up old problems (CERCLA) and to prevent the continued creation of uncontrolled sites (RCRA).

The ultimate goal of the RCRA program is to prevent the occurrence of uncontrolled hazardous waste sites in the future. Generators and transporters must ship wastes in the prescribed manner only to permitted disposal facilities. Treatment, storage and disposal facilities handle wastes according to interim status standards, and later, to the terms of their permits. Facilities that choose to close will do so according to their pre-planned closure and post-closure procedures. Financial responsibility requirements will ensure adequate funds to carry out closure and post-closure plans.

Vigorous enforcement of the statutory and regulatory requirements of RCRA will ensure the proper handling of hazardous wastes from point of generation to disposal, and, therefore prevent the creation of new "Superfund" sites. Compliance monitoring inspections to detect violations and subsequent enforcement actions and follow up to those actions will bring violations back into compliance. The regulated community will be aware of the Agency's determination to ensure compliance with requirements. Criminal investigations and enforcement actions will stop illegal acts such as midnight dumping and will deter such activities in the future.

Mr. MOLINARI. I would like to proceed with more specific questions.

This is addressed to you, Mr. Lucero. Do you know James Sanderson?

Mr. LUCERO. Yes, I do.

Mr. MOLINARI. Did you have any ties to Mr. Sanderson, or Mr. Sanderson's law firm or Chemical Waste Management prior to coming to Washington?

Mr. LUCERO. No.

Mr. MOLINARI. Were you ever present at any meeting concerning Chemical Waste Management that was attended by Mr. Sanderson?

Mr. LUCERO. No, sir.

Mr. MOLINARI. Do you know of any involvement of Mr. Sanderson in any agency decisions made with respect to Chemical Waste Management?

Mr. LUCERO. The only involvement, sir, that I am aware of is what was reported in the Washington Post or the article I read about the Vulcanus. I was not present at the discussion and I have read the reports. That is the extent of my knowledge.

Mr. MOLINARI. Would you happen to know of your own knowledge whether Mr. Sanderson had any meetings with Mr. Perry?

Mr. LUCERO. Not of my own knowledge, but I think I had read that he had admitted that in one of the articles.

Mr. MOLINARI. Other than articles, nothing from within the agency where you knew there were any meetings between Mr. Sanderson and Mr. Perry?

Mr. LUCERO. I don't have any direct knowledge.

Mr. MOLINARI. Mr. Lucero, are you familiar with any matters that were brought to your attention where a certain State may have manipulated the facts surrounding a dumpsite in order to secure more Superfund money?

Mr. LUCERO. Can you explain to me, sir, with a little more specificity what you might be looking for?

Mr. MOLINARI. Well, I have certain information indicating that there may have been an instance where a State has been less than forthright because of the fact that we at the Federal level are contributing 90 percent. The State manipulated the facts—lied, changed the details concerning the damage at a site.

Mr. LUCERO. I don't have any information to that extent, no, sir. No personal information.

Mr. HEDEMAN. Could I respond to that, Mr. Molinari?

Mr. MOLINARI. Sure.

Mr. HEDEMAN. All of the sites on the proposed national priority list are put on there through a scoring process using the hazard ranking system which is in the National Contingency Plan.

We use for that process information provided to us by the States and by our regional offices but the data is then quality assured by EPA.

Mr. MOLINARI. Let me be more specific so I can help you fellows. With respect to the Berlin & Farrow site in Michigan, weren't there charges made that there was manipulation by the State and perhaps region 5 in at least stating that the tanks that contained the toxic chemicals were above ground instead of below ground where they actually were?

Mr. HEDEMAN. I personally have never heard that charge.

Mr. MOLINARI. Mr. Lucero?

Mr. LUCERO. I know there were some disagreements on that site but I am not aware, I have no personal information that that was the basis of the disagreements.

Mr. MOLINARI. Did you ever read any or author any statements, Mr. Lucero, indicating that region 5 may have been playing games with the State of Michigan in order to acquire more funds?

Mr. **Lucero**. No, sir; I don't believe that I authored any but I am aware that a member of my staff did write something as I recall.

Mr. **Molinari**. Who was that?

Mr. **Lucero**. Mr. Kevin Gerraham.

Mr. **Molinari**. Do you recall what it was he wrote?

Mr. **Lucero**. No, sir; I don't recall right now.

Mr. **Molinari**. Is the information about these tanks coming to you for the first time?

Mr. **Lucero**. To be honest with you the issue may have been brought to my attention but it was not a site which I was paying a lot of attention to. I don't have any recollection right now.

Mr. **Molinari**. Are you aware of any memoranda that were circulating indicating that region 5 actions were somewhat questionable with respect to this specific site?

Mr. **Lucero**. I do remember that Mr. Gerraham may have participated in writing something but I don't recall seeing the document. If I did see it I don't remember its contents, sir.

Mr. **Molinari**. Does this sound familiar to you:

> What authority does the region have to make deals with the state before notice letters went out as to what work would be done at which schedule? Won't allow region 5 to railroad this project.

Mr. **Lucero**. It doesn't sound familiar to me. That doesn't mean I may have not seen it, it just doesn't sound familiar to me.

Mr. **Molinari**. Does this sound familiar:

> Per discussions with Lamar it is absolutely imperative that proper notification be made in writing to the responsible parties. We must make sure that we have given the RP adequate notice and the opportunity to perform voluntary cleanup of this site. If this means delaying Federal dollars several weeks, so be it. We do not want another Alaskan fiasco.

Mr. **Lucero**. No, sir; it doesn't. But I would note that the use of the word "Lamar"—if you have a date on that it might help me.

Mr. **Molinari**. Seven/eight/eighty-two.

Mr. **Lucero**. I would like to point out as I said in my opening statement that I didn't assume this job until July 19 and if that is the date of that it was before my time. It does seem unfamilar to me. The reference to Lamar would have been a reference I assume to Mr. Miller who was then in the acting position prior to my being there.

Mr. **Molinari**. I would assume that once you took the position that you did, you had the opportunity to review some of the documents relating to some of the sites in question even though they may have predated your position?

Mr. **Lucero**. In some cases that is correct but not in all cases. We were managing—we may have an open 100 cases and I personally have not looked at the documents in every case.

Mr. **Molinari**. Do you know of any cases where EPA and the Federal Government has lost their right to collect Superfund reimbursement because of a failure to give proper notice?

Mr. **Lucero**. No, sir.

Mr. **Molinari**. There have been articles published in the press that political—go ahead.

Mr. **Lucero**. Could I come back to that?

Mr. **Molinari**. Sure you can.

Mr. LUCERO. I would like to point out that it is also our interpretation in the Agency that notice is not required as a condition of seeking a cost recovery, at least it is unclear how to interpret the section that I read earlier from 104(a) as to whether that requires notice or not.

But the Agency has stated as a matter of policy in some guidelines which we refer to at 106(c) guidelines, those are published and to the best of my recollection in the first part of July and it states as a matter of policy that we will give notice.

It gives an explanation for why. I don't have those with me but I can provide them if you would like.

[The information received follows:]

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[OLCE-FRL-2117-2]

## Guidelines for Using the Imminent Hazard, Enforcement and Emergency Response Authorities of Superfund and Other Statutes

**AGENCY:** Environmental Protection Agency.

**ACTION:** Policy statement.

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**SUMMARY:** These guidelines are published pursuant to Section 106(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510 (CERCLA or Superfund). They are intended to provide Federal, State, local and private parties with a general description of how response actions undertaken pursuant to Section 104 of CERCLA will be coordinated with the use of enforcement authorities available to the Environmental Protection Agency (EPA or the Agency) and the Department of Justice (DOJ).

### Applicability of Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation or rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that these guidelines do not constitute a major rule or regulation because they are designed simply to describe how authority under CERCLA is to be coordinated with other existing statutory and regulatory authority and are not a significant change in the

Agency's approach to implementing that authority.

These guidelines were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any response from EPA to those comments are available for public inspection in the Office of Enforcement Counsel, (WH-527-F), Fairchild Building, 499 South Capitol Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Smith, Office of Enforcement Counsel (WH-527-F), Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, S.W., Washington, D.C. 20460, phone (202) 382-2550.

**SUPPLEMENTARY INFORMATION:**

## Introduction

These guidelines are published pursuant to Section 106(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 (CERCLA). They are intended to provide Federal, State, local and private parties with a general description of how response actions undertaken pursuant to Section 104 of CERCLA will be coordinated with the use of enforcement authorities available to the Environmental Protection Agency (EPA or the Agency) and the Department of Justice (DOJ). These include the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers.

Consistent with proposed revisions to the National Contingency Plan (NCP), FR Vol. 47, No. 49, page 10472, March 12, 1982, it is EPA policy to continue to pursue enforcement actions as an alternative to or complementary with Fund-financed response activities. This policy is necessary to ensure that the limited Superfund resources are utilized to the maximum extent possible where there is no solvent responsible party and therefore no alternative to Government response. Further, it is Agency policy to seek, whenever possible, cleanup by responsible parties prior to recourse to either the Fund or litigation. To this end EPA may, whenever possible, provide notice to potentially responsible parties and an opportunity to confer with the Agency in an effort to develop a satisfactory cleanup agreement.

While hazardous substance problems are widespread, their resolution is inherently site specific and requires developing response and/or enforcement actions at each site which are tailored to individual circumstances. Thus, an enforcement program to solve these problems must retain sufficient flexibility to be adaptable to a wide range of situations. Within the broad policy framework established by the proposed revisions to the NCP, selection of the appropriate enforcement tools to achieve the statutory goals must, of necessity, be based on case-by-case determinations.

The Administrator of EPA has consulted with the Attorney General in the preparation of these guidelines.

## Available Federal Legal Authorities

Federal legal authorities available to compel responsible parties to address threats created by hazardous substances including both administrative and judicial actions. These authorities exist not only under CERCLA but are found in a variety of other statutes including the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Clean Air Act (CAA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA) and common law. The range of potential actions which may be ordered or sought covers all phases of hazardous substances problems from initial information gathering needed to determine the existence and location of a potential problem, to complete elimination of the problem. Which particular authority or authorities will be used and whether to precede court action with administrative action will be determined on a case-by-case basis depending upon the most effective approach for achieving the desired goal of site cleanup.

The statutory authorities listed above provide EPA with several categories of enforcement tools designed to facilitate enforcement of the relevent statutes, including:

1. Authority to obtain existing data regarding a possibly hazardous condition:

a. Section 3007, 3013, 7003 RCRA—right of entry; obligation to furnish information.

b. Section 104(b), 104(e) and 106(a) CERCLA—right of entry; obligation to furnish information.

c. Section 8 and 11 TSCA—subpoena; regulations to maintain or submit information.

d. Section 308 CWA—right of entry; obligation to furnish information.

e. Section 114 CAA—right of entry; obligation to furnish information.

f. Section 1445 SDWA—right of entry; obligation to furnish information.

2. Authority to require responsible parties to collect data:

a. Sections 3007(a), 3013 and 7003 RCRA—administrative orders, penalties and court action.

b. Section 103(d) CERCLA—regulations to maintain records.

c. Sections 106 (a) and (b) CERCLA—administrative orders, penalties and/or court actions.

d. Section 8 TSCA—regulations to maintain or submit records.

e. Section 308(a) CWA—recordkeeping, sampling and monitoring.

f. Section 114 CAA—recordkeeping, sampling and monitoring.

g. Section 321 CAA—subpoena.

h. Section 1445 SDWA—regulations to maintain records.

3. Authority to compel responsible parties to cleanup hazardous conditions:

a. Sections 3008 and 7003 RCRA—administrative orders, penalties and court action.

b. Sections 106 (a) and (b) CERCLA—administrative orders, penalties and court action.

c. Section 504 CWA—court action.

d. Section 1431 SDWA—administrative orders, penalties and court action.

e. Sections 6 and 7 TSCA—court action.

f. Sections 113 and 303 CAA—court action.

4. Authority to recover money expended by the government to investigate and cleanup a hazardous condition:

a. Sections 107(a) and 112(c)(3) CERCLA—court action.

b. Section 311(f) CWA—court action.

c. Sections 3013 (d) and (e) RCRA—administrative orders and court action.

5. Penalties for failure to comply with administrative orders, regulations or permit conditions:

a. Sections 3008, 3013 and 7003 RCRA—civil penalties, fines and imprisonment.

b. Sections 103(d) and 106(b) CERCLA—fines and imprisonment.

c. Section 107(c)(3) CERCLA—punitive damages.

d. Sections 1431 and 1435 SDWA—fines.

e. Sections 311(b) (5) and (6) CWA—civil penalties, fines and imprisonment.

f. Sections 309 (c) and (d) CWA—civil penalties, fines and imprisonment.

g. Section 16 TSCA—civil penalties, fines and imprisonment.

h. Section 17 TSCA—specific enforcement and seizure.

i. Section 113 CAA—civil penalties, fines and imprisonment.

In addition to these statutory authorities CERCLA specifically preserves the Federal and/or State common law, as an available legal tool.

Under the general doctrine of public nuisance the United States can seek to compel a responsible party to investigate the nature and extent of a hazardous condition, take remedial action to correct that condition, and pay the costs incurred by the government in investigating the problem and taking any remedial action.

There are obviously differences inherent in the statutory provisions that are applicable to the utilization of these authorities. These differences will influence decisions on the choice of legal authorities and legal approaches for any case.

The meaning and reach of these statutory authorities is a matter under continuous review by Federal courts. The EPA and Department of Justice view of what these provisions mean is expressed in the public documents filed in these cases. The Court decisions provide the interpretation and guidance, and the meaning ascribed to the statutory provisions obviously evolves as new cases produce new decisions. These decisions in turn shape EPA and DOJ decisions concerning which statutes to employ.

### Coordination of Enforcement With Response Activities

A. *General.* Agency policy as reflected in the preamble to the proposed revisions to the NCP, is that enforcement is to be used as an alternative to or complementary with the use of Superfund monies.

Early involvement of State and Federal personnel in the site identification and priority setting process is contemplated by the proposed revisions to the NCP. Before Superfund money is authorized for expenditure at any site where EPA is the lead Agency, it will be determined, based on the exigencies of the hazard presented and input from the legal and program personnel involved, whether enforcement, Fund use, or some combination of the two is appropriate.

This is emphasized by numerous references throughout Subpart F of the proposed revisions to the NCP pertaining to the need to undertake efforts to identify non-Federal potentially responsible parties simultaneously with the technical investigation of a release or threatened release. See, for example, §§ 300.63(a)(3), 300.65(b) and (e).

Further, § 300.65(d) of the proposed revisions to the NCP describes the Hazard Ranking System (HRS) that will be applied to sites to allow a comparison of risk or danger in widely varying situations. The criteria in the HRS are applicable to any site, regardless of the existence of potentially responsible parties.

It is the responsibility of the Office of Solid Waste and Emergency Response through its Regional program personnel, with the assistance of Agency legal personnel, the Department of Justice, and State legal personnel where appropriate, to undertake the necessary investigations to determine the existence of potentially responsible parties for releases or threatened releases where EPA is the lead Agency under the proposed revisions to the NCP.

Prior to the initiation of either Fund-financed response activity or enforcement action, the Agency will attempt to provide oral or written notice, where appropriate considering the exigencies of the situation, to identifiable potentially responsible parties (individual, corporate or public) who may be partially or wholly responsible for the hazard at a particular site. This notice is intended to provide potentially liable responsible parties with an opportunity to undertake required cleanup in lieu of Government response and to advise these parties of their potential liability should the Government undertake the cleanup of the release or threatened release. This notice is not, however, a condition precedent to undertaking a response action or an action to recover money spent during such a response.

Where these efforts prove unsuccessful in leading to a satisfactory cleanup agreement, the Agency will determine whether to employ the Fund for site cleanup or to use one or more of the various administrative and/or judicial tools described in these guidelines in lieu of or in combination with Fund use. These decisions will be made jointly by the Office of Legal and Enforcement Counsel and the Office of Solid Waste and Emergency Response with input as appropriate from the On Scene Coordinator (OSC), the Regional Response Team (RRT) or National Response Team (NRT), when activated, and the Department of Justice.

When the decision is made to employ the Fund for site cleanup, every effort will be made by the Office of Legal and Enforcement Counsel to recover the Government funds expended, including referral to the Department of Justice for collection action where necessary.

The Agency will necessarily employ a significant percentage of its enforcement resources at those hazardous waste sites on the Interim and Final National Priorities List for which responsible parties can be identified. However, sites not in the priority ranking system described in the proposed revisions to the NCP may also be the subject of enforcement actions where appropriate.

B. *Extent of Remedy.* As stated in the preamble to the proposed revisions to the NCP, the Agency has, on a case-by-case basis, historically made a combined legal and scientific judgment in enforcement actions as to the appropriate extent of remedy, by consideration of a variety of generic and case specific factors. This has resulted in settlements and initial court decisions calling for remedial activity in individual circumstances ranging from complete elimination or removal of contaminants to nondetectable levels, to installation of containment and/or treatment alternatives in addition to or in lieu of rehabilitation of the contaminated environment.

This case-by-case determination of the appropriate extent of remedy will continue for responsible party cleanup at Superfund sites. The Agency will seek, through voluntary agreement or administrative or judicial processes, to have those persons responsible for the release cleanup in a manner that effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, and the environment. EPA will evaluate the adequacy of cleanup proposal submitted by responsible parties or determine the level of cleanup to be sought through enforcement efforts, by consideration of the factors described in §§ 300.67 (e) through (j) of Subpart F of the proposed revisions to the NCP. The Agency will not, however, apply the cost balancing considerations discussed in section 104(c)(4) of the Act and § 300.67(k) of Subpart F of the proposed revisions to the NCP to determine the appropriate extent of remedy for responsible party cleanup. These cost balancing considerations are applicable only to Fund-financed activities.

C. *Coordination With States.* It is the intent of these guidelines to encourage those States that are willing and able to do so, to take the lead in bringing enforcement actions to address hazardous waste problems.

Coordination of Fedeal actions with State actions will be primarily accomplished through the use of cooperative agreements as provided in section 104(d) of CERCLA.

On a case-by-case basis, State and Federal legal officials will decide whether State or Federal or a combined enforcement action is appropriate. Where the State is taking the enforcement lead, EPA and DOJ may provide legal assistance as appropriate, including access to expert witnesses, sample analysis capability, and training.

Suits to recover Superfund money whether expended directly by the Federal officials or spent by State officials following allocation of funds from the Federal government will remain the responsibility of Federal officials. Section 300.68 of Subpart F of the proposed revisions to the NCP requires that all documentation of activities at a site shall be collected and maintained to form the basis for cost recovery. For this reason there will be a continuing close relationship between State and Federal officials with respect to actions where the State is taking the enforcement lead.

**Conclusion**

As the preceeding discussion clearly shows, enforcement and Fund use decisions are closely linked from the early stages of hazardous waste site identification and assessment. The intent is that identification of responsible parties proceed contemporaneously with site hazard ranking to encourage maximum non-Federally financed cleanup, and to insure timely enforcement action should it become necessary. Should enforcement prove necessary the Agency and DOJ will encourage and support maximum use of State authorities and personnel. If Federal enforcement authorities are utilized, the Agency will issue administrative orders, and/or undertake judicial actions in cooperation with DOJ, that seek to impose reasonable, cost-effective remedies that achieve levels of cleanup that effectively mitigate and minimize damage to and provide adequate protection to public health, welfare and the environment, consistent with the proposed revisions to the NCP.

Dated: May 11, 1982.

**John E. Daniel,**

*Acting Administrator.*

[FR Doc. [illegible] Filed 5-12-82; 8:45 am]

BILLING CODE 6560-50-M

Mr. **Molinari**. Mr. Hedeman, are you at all familiar with the site in question in Michigan, the Berlin & Farrow site?

Mr. **Hedeman**. Vaguely familiar but I am not——

Mr. **Molinari**. Is there anything you can add to the questions I have asked?

Mr. **Hedeman**. Not that I can recall.

Mr. **Molinari**. Nothing of your independent knowledge?

Mr. **Hedeman**. Not that I can recall.

Mr. **Molinari**. Mr. Lucero, does this sound familiar to you:

> As EPA headquarters representatives on the Berlin & Farrow negotiating team, we are gravely distressed at this misstatement of a critical technical fact by the State and regional office in order to expedite project funding. Not only do such actions jeopardize cost recovery for this case but more importantly they destroy the Agency's credibility for future negotiations on more costly and nationally significant cases.

Mr. **Lucero**. That one sounds more familiar because I believe that after I got to the Office of Waste Programs Enforcement that Mr. Gerraham brought that issue up and he prepared a memorandum I believe and that sounds like it may have come from that but you will have to help me with that.

Mr. **Molinari**. I will be glad to help you. I have a copy of a memorandum that was specifically addessed and sent to you by Mr. Gerraham, and that is why I am a little puzzled at your lack of knowledge about it.

Mr. **Lucero**. Well, I do remember that document but to describe the circumstances to you that Mr. Gerraham approached me and there were a lot of other things going on at the time, he said I have this concern, and I said in that case we should bring this to the attention of the Superfund office.

Now, it subsequently turned out that Mr. Gerraham's understanding of the issues was not complete and the matter involved bringing regional officials in, Superfund officials, and my office to resolve the differences of opinion.

And that is how we dealt with that issue. I do recall I suggested to Mr. Gerraham that he should take that to Mr. Hedeman and at least raise the point so he would have been aware of them.

Mr. **Molinari**. All right.

Mr. **Lucero**. But again, just to emphasize, as I recall we did resolve the apparent disagreements between the various parties. I think that the Office of Legal and Enforcement Counsel was also involved and there was a joint meeting somewhere in I believe late July or early August where these issues were resolved.

Now I certainly did not personally participate in that.

Mr. **Molinari**. I have other questions, Mr. Chairman, but in fairness to the other members of the subcommittee I would like to give them an opportunity to be heard. I will ask more questions after the other members have had a chance.

Mr. **Roe**. Would Mr. Andrews take the chair, please.

Mr. **Andrews** [presiding]. Mr. Roe.

Mr. **Roe**. I asked the distinguished gentleman from Texas to take the chair because my notes are here and I didn't want to have them moved around.

I would like to go back to the policy situation which was your initial testimony. There is an old statement, the operation was a success but the patient died. The purpose of the Superfund as this member understands it generated from the point of view that we had a terrible problem existing in America that had to do with the very essence of the health of the people of this country. We came to grips with that and we passed a piece of legislation and we said in that legislation this is an emergency.

Let me ask some specifics.

When we were discussing with the Justice Department and we were unfolding the process the other day after we had a chance to analyze the uncensored documents, we asked the following question, "What is really the purpose of Superfund and what procedures do you follow?"

And the response that we got both from the administrators, legal administrators of the EPA together with the Justice people who sat in, what procedure do you follow now to clean this up and you speak to 114 sites on the Superfund priority list and we speak of possibly 12,000 contaminated sites in the Nation, am I saying that correctly?

Mr. HEDEMAN. There are 419 now on the priority list and about 15,000 in the country.

Mr. ROE. In your statement you came back and complimented my State of New Jersey; that New Jersey with our sister State of New York had established State programs that were really quite effective and were moving rapidly in that direction and we appreciate your observations.

You also indicated that a substantive amount of the funding in those two respective States is rather high, percentagewise, and they were being allocated perhaps because they are moving ahead faster; is that a reasonable observation to make?

Mr. HEDEMAN. That is correct, and more specifically because they were able to move ahead in the 1979-80 timeframe to identify the problem and select the remedy.

Mr. ROE. They also invoked their local funding, too?

Mr. HEDEMAN. Exactly. They are at the construction stage where we are not at the other sites. That is why most of the money is going into those sites.

Mr. ROE. Who identified the 114 Superfund concerned sites, the 114 we are concentrating on.

Mr. HEDEMAN. 115. It was the EPA.

Mr. ROE. 115 or 114, it is the EPA.

Mr. HEDEMAN. Yes.

Mr. ROE. So the EPA whatever process they followed they identified the sites; is that correct?

Mr. HEDEMAN. Yes. That was done on October 27, 1981, and it is called the interim priority list.

Mr. ROE. I don't know that I can quote you exactly but you did mention that you expressed a concern as an administrator that the other 48 States, for whatever the reason is, were not moving ahead as rapidly as some other States. That is what you said?

Mr. HEDEMAN. I believe that is correct.

Mr. ROE. Then we came back and you suggested the reasons in your judgment they may not be moving ahead more rapidly might be because of needs of local funding. Did I understand that correctly?

Mr. **Hedeman**. That is correct.

Mr. **Roe**. Let me paint a scenario. One, the purpose of Superfund was to get at it as quickly as possible because really Congress and EPA—I don't think the Nation really knows the order of magnitude of this problem——

Mr. **Hedeman**. I agree.

Mr. **Roe**. We know it exists. We know we have identifiable cases of extraordinary impact when we speak of spending $30 million to move a whole town out of an area, as we did recently, that obviously was responsible.

The problem existed and we had to do something.

Now, who in EPA has the expertise to determine the 114 or 115 sites versus a potential of 12,000, the impact upon the environment and the health of the people? Who made that decision? If the other 48 States have not been moving ahead intensively, and obviously 95 percent of these potential ticking timebombs are in those other States, what is happening in those States? Are they just sitting there?

Mr. **Hedeman**. Well, the funding problem—has not become a problem in identifying sites.

Mr. **Roe**. I didn't ask about funding. I said who is determining that?

Mr. **Hedeman**. The EPA is determining that. I would like to focus on a major policy decision that the Administrator made in that context. We came up with an interim priority list of 115 sites on October 27.

Mr. **Roe**. EPA did.

Mr. **Hedeman**. Yes.

Mr. **Roe**. I don't mean to interrupt, just to follow the continuity, of the 12,000, who identified the 12,000 nationwide?

Mr. **Hedeman**. Primarily the EPA through three different systems: One being used in the RCRA Program; a second one being used as part of a preliminary enforcement program before Superfund came into effect; and the third one was a requirement in the Superfund law itself that anyone who knew the existence of an abandoned hazardous waste site should report it to us within the first 6 months.

So we had three lists. We consolidated them and we now have about 15,000 sites.

Mr. **Roe**. If the gentleman will yield further. Nobody has said how bad those sites may be in the other States because, in your own observation, the other States really—I don't mean this unkindly to other States—have not done the intensive work perhaps being done in New Jersey in measuring and understanding the impact?

Mr. **Hedeman**. To the extent our regional offices have information about those sites, the 15,000, they have proceeded on a course of attempting to identify the ones that they are comfortable with informationwise and nominating them for the national priority list. That is the system that we employed.

We then ranked all the nominations to come up with the 418 sites.

Mr. **Roe**. You know where I am leading, don't you?

Mr. **Hedeman**. Let me throw one thing in because it is very key. One of the issues we had to deal with in that whole process was whether or not we would put on the national priority list only sites that the States concurred in putting on the list.

Or whether we would essentially have a pure list of every site we thought posed a potential problem of enough severity in getting on the list.

Mr. **Roe**. Could you give us a breakdown of the 419 sites as to what States they are in?

Mr. **Hedeman**. Only from memory, there are 65 sites in New Jersey; 46 in Michigan——

Mr. **Roe**. How many States have sites listed on that 419 priority list?

Mr. **Hedeman**. I believe all but two or three have a site.

Mr. **Roe**. All but two or three?

Mr. **Hedeman**. As I recall Georgia does not have any sites and I believe Alaska and—I think it is just Georgia and Alaska. I will have to check that for you.

Mr. **Roe**. I will tell you what is puzzling me and see if this makes sense. We say we have adequate funding in this year's timeframe and we have adequate funding projected in the President's budget and in our discussion I get back to what the Justice people said. They said we have a two-step procedure we follow in concert with the agency; one, we believe that we clean up the surface contamination first. That is really what our negotiation is about, we get into that situation and we work together and get that cleaned up.

Then the second thing, this is the key; we had to investigate them further and find out what the impact would be on the ground water supply. I know you are versed enough to know that I am chairman of that subcommittee, as you know.

Mr. **Hedeman**. Yes.

Mr. **Roe**. Probably 75 or 78 percent of our water supply for people now comes from ground water, roughly.

Mr. **Hedeman**. That is correct.

Mr. **Roe**. We are coming back and saying there is adequate funding but I am wondering if we are lost in procedure here? As the chairman says, how long is it going to take? I don't think you can answer that question and I don't expect you to. I don't think it is possible for you or anybody else to answer.

But the question before the House is basically the following: Air and water are the two key issues to the substance of life. All the other discussions, legalese, and I mean no effrontery to my legal friends, is immaterial. That is how we get to the issue of resolving the matter. But in the mean time 80 percent of our water supply coming from gound water is in some way in some State affected by these kinds of toxic situations.

Nobody really knows the order of magnitude of that. The impact upon peoples health; no one really knows. If we have a procedure that will take years through the courts and years through negotiations in the meantime according to what their own process is, vis a vis further studies to be made on ground water after removing surface contaminated material, nobody really knows at this point when people are drinking water what they are drinking; do they?

Mr. **Hedeman**. No.

Mr. **Roe**. I am not painting this on you, you are a citizen like I am.

Mr. **Hedeman**. I agree.

Mr. **Roe**. So how long do we stand and wait to get the water supply cleaned up and one put off base that you cannot use it; or two, replace it? That is the issue before this committee. This subcommittee is an investigative oversight and review subcommittee. It is the subcommittee that comes back and recommends to the authorizing committees—we have discovered these particular issues; not who pushed Ike in the system, but what is the impact on the water supply and on the health of the people of the United States.

That is the issue at hand.

Mr. **Hedeman**. I agree.

Mr. **Roe**. We are trying to elicit information from you, not criticizing you because you are trying and saying is this system working? If we have to wait 5, 7, 8, 10 years on 419 sites and we don't know the impact upon the water supply, are we serving our people? I know this is dramatic but I mean it to be.

Are people insidiously bringing into their body systems on a daily basis more cyanides, more PCB's, whatever, and we do not have time because of legal procedures to get into the guts of the issue, as to how to stop the poisoning of water supplies.

Now I know enough about water underground to know what is happening in New Jersey and other areas in poisoning the water supply. If we have set up a procedure to negotiate, before we can get to the guts of the issue of protecting that water supply, then the Superfund is not doing what the Superfund should be doing.

We are not saying that you are not doing a good job. It is a new expertise, new direction. But I am trying to make the point of view of an authorizing committee. We tried to get a whole ground water study commissioned on an emergency basis last year but lost in the lameduck session. We are on that issue right now, and we are going to come back and say that we believe that if 80 percent of the ground water in this Nation is the sustenance of life to the people, we cannot afford the delay; $1.6 billion may be like a drop in the bucket, and maybe we are not paying attention. Maybe we should be saying to the people of America, you have to spend $10 billion now to protect your water supply. That is the issue before the country, not the legal issue.

Do you understand what I am saying?

Mr. **Hedeman**. I not only understand but totally agree with you.

Mr. **Roe**. That is the point I am trying to make.

If we can get to the point where we get all done with the whole situation, and I mean no effrontery to anyone's point of questioning whatever, to come back and hopefully as quickly as possible say one thing that is an advantage out of this whole cross-examination and this investigation is good, because is the Superfund working? Does it go far enough? Do you have the tools to do it? Should Congress say to EPA, "Never mind this litigation, let that come second; your job and our job is to clean that up right now"? Can we wait 2 or 3 years to study what may be happening in the water supply?

Do you understand what I am getting at?

Mr. **Hedeman**. I do.

Mr. **Roe**. Is it a national emergency? If one State has only 10 sites and there are 12,000, how severe are the 12,000? Do you have enough inspectors out there? Is it a national emergency? Are we relying too much on the States? Should we be talking to everybody involved?

Do you see what I am trying to get at? Does this intensity exist only in New Jersey and New York? Does it exist in other States? Should the States do more? What should we do to help you make it work?

That is the issue before this Congress. Or are we fooling the American people? Are we coming back and saying, yes, we have a Superfund; nobody is carrying it out; it is getting done; we are trying, and so forth.

How severe is the problem?

Mr. HEDEMAN. May I respond just briefly.

Mr. ROE. Yes, please.

Mr. HEDEMAN. The first mistake, in my judgment, that was made was to name this program Superfund, because $1.6 billion is not enough money to deal with this problem. I don't know how much money is required but the public perception is that Superfund is a giant pot of money available to correct every problem in this country, and nobody has ever said, from EPA or otherwise, that that is correct.

The second problem is that I believe we have worked within the best ability that we can, given the laws that you gave to us—to respond to as many sites as we can.

Mr. ROE. If you were a Member of Congress and you could make a decision, would you change the law? Do you think the law is adequate, that the Superfund's funds are adequate? Do you think the process is adequate, the order of magnitude of the problems? Or do you think this program should be expanded?

Do you think it should have an emergency priority basis in the Nation, that it is that serious to the water supply, or isn't it? Can we afford the typical lackadaisical approach of, in effect, saying to the American people, yes, we are trying to do something but it is going to take a hundred years to get it done, or it will never get done?

Mr. HEDEMAN. I could sidestep that issue by saying——

Mr. ROE. Well, why don't you answer? You have been very honest up to now.

Mr. HEDEMAN. Speaking personally, I could never report to anyone that $1.6 billion is adequate to respond to the problem.

Mr. ROE. Therefore, isn't it reasonable for us to question whether we are putting the proper resources in the proper order of magnitude and making the expenditures that ought to be made on this issue? Isn't that a reasonable question to ask?

Mr. HEDEMAN. Not only is it a reasonable question but it is the first time in this entire Superfund debate that the questions you just asked have been asked.

Mr. ROE. Thank you.

I am going to defer now, Mr. Chairman, if I may.

Mr. LEVITAS [presiding]. Thank you very much.

One of our members has a schedule conflict and will be leaving, so at this point I recognize the gentleman from Texas, Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman.

I just have, really, two areas, two questions, really, and I would like to address them to both of you. The first is philosophical in a sense, and the second primarily procedural. The memorandum that Mr. Lucero read to us earlier, I, like the chairman of our subcommittee, am very troubled by it.

Ms. Lavelle told this subcommittee last week that one of the reasons that the EPA rushed to settle some of these lawsuits was because many of the cases lacked sufficient evidence and many of the attorneys in the agency were not experienced enough to go to court I assume or litigate the lawsuits. I would like each of you to comment on that specifically.

I know, myself, from my own background as an assistant district attorney for sometime, our group prosecuted organized crime cases and major investment cases in the Houston area. We were constantly understaffed and undermanned and underfunded. Much of the information we dealt with was highly sensitive. The cases were highly documentary in nature. Much like many of the lawsuits that you have tried.

I find myself troubled, as an old prosecutor, by the limits that I think the type of philosophy Ms. Lavelle has and is having in your agency about negotiating so quickly prior to any litigation.

I am curious what we as a committee should be recommending to the Congress in terms of legislation. What does that philosophy do to the treble damage argument that you have been supplied with? What does that do to your leverage and, literally, prosecutorial discretion? I wonder if you would comment on the general question in a general way, please.

Mr. HEDEMAN. I think most of that question can be responded to by Mr. Lucero, but I would like to make some personal observations.

Having practiced law for 15 years and, second, having been on the faculty of the George Washington Law School for the last 10 teaching environmental law, I believe that the entire area of environmental law, and particularly this piece of legislation, is exceptionally complex. And waving a magic wand and expecting lawyers to appear to deal with this issue probably is more than can be expected. At least lawyers who are qualified to deal with the issues without a fair amount of intense technical and other training not only in the context of applying environmental law but in, as you have indicated in your experience, administering it in the trial setting.

That is a problem that the United States faces not only in environmental law, in my opinion, but in pretty much every other area. I can remember representing cases for the Army Corps of Engineers, many of which this committee oversaw, in the 1970's in which we went through this one case three different sets of Department of Justice department attorneys before we finally got to the courthouse. I am just pointing that out as a personal, real world observation of the problems that the United States does experience generally in the litigation process.

The Department of Justice will probably rise and say that they are capable of handling any case at any time with as much competence as is necessary for the occasion. But I can tell you that in my 15 years of experience, that position notwithstanding, if it is the

Department of Justice's experience is that justice, while that perhaps may occur, it takes an awful lot of time to get a new batch of Justice lawyers briefed upon something such as lock and dam 26, or Tennessee Tombigbee Waterway, or 419 hazardous waste sites, and get them to the point where they can get to the courthouse and deal with a legion of corporate and other lawyers who may not have that problem.

Mr. **Andrews**. Yes.

Mr. **Lucero**. Mr. Andrews, I would like to just emphasize one thing. It seems to me there are two issues about why this negotiating strategy ought to be an issue. The first is does it take too long, does it delay?

The second is, is the basis of the negotiation correct that the agency has interpreted? The reason I provided the statement was we are very sensitive to your concern, and we agree that we should not take a lot of time up front. Our objective has been, with some difficulty, to try to keep ourselves within the 60 to 120 days. As Mr. Hedeman has been saying, once you enter into litigation it takes a very long time.

The negotiating without litigation is possible and we expect that to occur. It is just we felt that because of the development of the cases requiring a large amount of technical work up front, that before we continue to invest in litigation that take a very small component of time, and I cannot explain why cases that were filed 2 years ago took that long in every case. Those cases were not under my control. When I got to the Office of Waste Programs Enforcement, we said we would like to do this, and people said, well, we don't want to slow down the litigation. We don't want to appear to be doing this. We said, that is right, so we will try to keep it constrained.

That was one decision we made.

Now, Mr. Levitas earlier said he did not agree with the substance of the negotiation point and I think there are differences of opinion.

I would just like to point out for your benefit and for the benefit of the members of the subcommittee here today that it is not all that clear as to how well we can maintain a joint and several argument. It is our position, it is the Government's position, Justice, Office of Legal Enforcement Counsel, and my office, that the liability on the part of the generators is joint and several; it is a strict liability, and that it is available to us in a litigation case under 106.

But what I would like to point out is that there is at least one or two cases that the Justice Department now has on appeal where a court has disagreed with us, and there is—they have referred to, among other things, legislative language that Congress itself placed in the authorization of Superfund as support for that position. That is against our basic negotiation position.

So I would like to make you aware of that at least.

Mr. **Andrews**. Let me just move to something else and ask you a procedural question.

In the process of the decisionmaking in the agency as to whether to litigate or settle or negotiate, who made that final decision? Was it Ms. Lavelle? Was it Mr. Perry? How was that decisionmaking process structured?

Mr. LUCERO. It worked essentially like this: In every case for which there was—I need to make a couple of distinctions. If the case had been referred to Justice because we intended to use litigation support—let me start over again.

We did not want to enter into negotiations without knowing generally what our enforcement response would be because to negotiate effectively you needed to be able to tell the parties you were negotiating with what you would do if they didn't want to seriously negotiate with you.

In the cases where we were going to file a lawsuit, we would have made a referral or been in the process of making a referral to the Justice Department.

In those cases we would involve the Department of Justice, the Office of Legal Enforcement Counsel, and basically my office representing Ms. Lavelle.

If any decision were to be made about whether to sue, to settle, what we were going to do next, it would be the result of the three people or the three offices agreeing on the approach.

In the cases where we were going to consider an administrative order or in something we did in the past, but we don't prefer to do it any more, that is a voluntary agreement. It would involve at least the Office of Legal Enforcement Counsel under Mr. Perry, and my office under Ms. Lavelle.

In many of those cases as well, because the Department of Justice had an interest in the development of the case, they would also be involved in it.

As far as I am concerned, the way we run the Superfund enforcement program right now is as a tripartite organization.

Mr. ANDREWS. What happens when there is an impasse in decisionmaking and the judgment calls are different between the tripartite?

Mr. LUCERO. It would be elevated to all of the top folks.

Mr. ANDREWS. And who are those folks?

Mr. LUCERO. Ms. Lavelle, Mr. Perry and Ms. Dinkins. If there were a disagreement, then the next step would be to go, if necessary, to the Administrator.

Mr. ANDREWS. Explain a little, if you would, please, why Ms. Dinkins, with the Justice Department, was involved in that decisionmaking?

Mr. LUCERO. Any major settlement or litigation—let me describe the operational procedure.

The way we worked normally is that my staff or myself would participate in the case, Mr. Kurent would participate and his staff and in some cases Mr. Brown with Mr. Kurent as the enforcement counsel and then Steve Ramsey from the Environmental Enforcement Section of Justice.

Whenever we got to a point as to a decision to take—if it were to file a lawsuit, it was the Department of Justice that would sign that along with Mr. Perry and so the issue would have to be surfaced to his level and to her level to make the decision to file the lawsuit.

In the case of any of these major settlements, the same process was used and they are all signatories on the agreements.

Mr. ANDREWS. Did anyone else ever enter into that decisionmaking process from the executive branch, from within the agency? Did anyone else in the cases you are aware of ever get themselves involved in the decisionmaking process as to whether to litigate a case or to settle a lawsuit?

Mr. LUCERO. I need first of all to make a little bit more accurate my last statement.

There was another component of the Agency that was involved routinely and that was the regions. That would include in most cases the regional counsel, the division director responsible for Superfund enforcement, and in some cases the regional administrator or the deputy regional administrator.

They may get involved in decisions on the case so that you would have as many as six parts of the Agency involved in a decision.

In terms of other parts of the Agency, no, not that I can think of.

In the terms of other parts of the executive branch, not that I can think of.

Mr. ANDREWS. When there was a complete impasse in the decisionmaking process, the administrator made those decisions?

Mr. LUCERO. Theoretically, that is right. I cannot think of any situation where we reached a complete impasse since I have been in the office.

Mr. ANDREWS. Thank you both very much.

Thank you, Mr. Chairman. Thank you for the time.

Mr. LEVITAS. Before I recognize the gentlewoman from Connecticut, I just want to followup on that last point.

Ms. Lavelle testified before this committee last week, and said that because of impasses and disputes between her and Mr. Perry and between her shop and Mr. Perry's shop that there were disputes that were not being resolved and she further testified that that led to a backing up of decisions being made which delayed the program.

And, that she had tried for a 2-month period to get Mrs. Gorsuch, Mrs. Burford, to give her a hearing in order to resolve these matters.

Do you know anything about that?

Mr. LUCERO. I was responding to the question that said within a case, Mr. Chairman.

I think there may have been disputes that as to process and guidance, policy development, et cetera, that there was frustration and that we had not been able to resolve issues.

Mr. LEVITAS. Don't you know that for a fact?

Mr. LUCERO. Yes, I do.

Mr. LEVITAS. Were you bringing to Ms. Lavelle's attention, or Mr. Hedeman, did you bring to Ms. Lavelle's attention the operating problems that this type of impasse was creating which in any way constrained your job in going forward with your job?

Mr. LUCERO. Yes.

Mr. LEVITAS. Wasn't that in part what led Ms. Lavelle to make the decision she had to take it up to the administrator for resolution?

Mr. LUCERO. Yes.

Mr. LEVITAS. Thank you.

Mrs. Johnson, the gentlewoman from Connecticut.

Mrs. **Johnson**. Thank you, Mr. Chairman.

You have pursued the question that was most on my mind.

It is very interesting and I just want to be certain that I understand what you are saying. The impression we have had to this point is that the conflict, the unresolved conflict in the Department in terms of policy did impede the enforcement effort.

Mr. **Lucero**. I can't characterize it that way. It slowed down decisions we wanted to make.

Mrs. **Johnson**. It slowed down the rate at which the enforcement process proceeded; is that correct?

Mr. **Lucero**. There were certain guidances that we wanted to get out and there were things that had been slowed down until we could resolve our differences.

Mrs. **Johnson**. All right.

Let me just go back to a different subject. In the meeting with Justice there was discussion of the difference between the rationale in the Seymour settlement and the rationale in other settlements including the fact that the Seymour settlement was to my understanding unique in that it relieved the companies involved from liability for ground water cleanup.

Could you describe a little more completely why Seymour was treated differently and what the rationale was?

Mr. **Lucero**. Yes. The problem at Seymour, which has been discussed in great detail inside and outside congressional fora, was primarily that the State was not in a position to put up the State's share.

Most notably, this was a 50-percent site, and in order to do any cleanup at that site, the State needed to come forward with a share, with a share.

The State had approached us, as I recall, in any number of ways they might solve that problem. They said "Can we pledge future moneys? We have a tax that is coming due in April. We don't know how much it is, but we will collect some amount. Can we pledge that and go forward?"

And those discussions were not productive. The result was that we had a site, 14 acres of at least one of the worst visible sites of 60,000 drums, several—20, as I recall, large bulk storage tanks, and a potential danger; and knowing that the State could not make its share, we made a commitment to actively and aggressively attempt to pursue a cleanup.

Now, Seymour had been a filed case for 2 years. It was originally filed in the last administration, but it did not have the benefit of the Superfund authorities at that time.

Most notably, the suit was brought against the owner/operators, but it did not reach other responsible parties such as generators or transporters which Superfund now gives us an authority to do.

The suit had not been amended to include those folks as of yet.

There had been—even before I got to the Office of Waste Programs Enforcement—there had been a series of discussions with different groups; those groups included, as I recall, a fairly large number of generators up to 100 or so about how to settle this case.

The Agency had been inclined to try to deal with this case knowing that the problem was likely to be litigated for a long period of time if we had added the extra parties in, and was inclined to consider a negotiation based on the following issues: for a total cleanup, what would it cost? And would the responsible parties pay for it?

We were prepared to go that way while we were developing the thinking, the documents and the presentations that we eventually made in Indianapolis along that line.

A smaller group of generators which consisted of a number of that group of 100 that had been negotiating with the Agency for some time, came forward and said, we would like to talk about possibly doing the surface cleanup.

Now, why don't I stop there and maybe you might want to ask me a question so I don't just keep going, unless you prefer that.

Mrs. JOHNSON. What you are basically saying is that you were after the bird in the hand because of the complicated history of this case?

Mr. LUCERO. Yes.

Mrs. JOHNSON. And the inability of the State to provide their portion of the match which would have made Superfund moneys available?

Mr. LUCERO. That is right.

Mrs. JOHNSON. Considering the cost of ground water cleanup, that seems to be a great risk to take. Was that kind of settlement sought in any other cases?

Mr. LUCERO. Could I say something about the risk that we thought we were taking?

We knew that it was a difficult decision to make to consider a full release. It was very clear to us that negotiations would not go anywhere further for the surface cleanup. It was also our expectation that we would not receive a significant amount of response to this total possible cleanup, but we had had one of the consultants that were funded through one of Mr. Hedeman's contracts sometime previously, perform an analysis and that analysis gave us a sense of what the total costs were likely to be.

We then, for the ground water, made an estimate—we basically built fudge factors in for the Government. When we got the end of the negotiations, we found ourselves in this position; we found we had worked out a settlement that would deal with the surface problem which was of concern to us; we also found slightly later maybe a month or so later, that a number of the parties had responded to the other settlement program which was just a pro rata settlement, but still remaining at the site—something we fully expected—still remaining at the site are 130 responsible parties.

That does not include transporters who were also responsible parties.

It was our expectation that that would be the situation and that indeed turned out to be true. The significance of that is as follows: That we intend to sue those parties who did not take advantage of what we had offered, on a full joint and several liability for whatever the cost of the final cleanup is.

We felt that we were protecting the people of Seymour and the U.S. Government and the State government who participated, and the local governments who also joined us in this approach that we still had a viable case, and that was the reason we felt it was a reasonable decision to make.

I agree with your general proposition and wherever the fund is in a position to move, wherever the State is ready to put up its share, it has been our policy, it is our policy that we feel most comfortable with, is that rather than try to settle for full costs of ground water cleanup up front, without knowing the likely results, is that we would rather use the fund or, if necessary, use enforcement support money that if the fund doesn't cover it, to at least study the problem so we have an accurate statement of what we think the final cost is.

Then we can go forward in the lawsuit to begin the discussions. That is our preferred approach. Seymour was a very difficult case for the reasons I discussed.

Mrs. JOHNSON. Had your Agency brought to Congress this session or planned to bring to Congress this session a request to amend the Superfund law to deal with some of the operational problems that you were running into?

Mr. LUCERO. I can't say that there were any active proposals.

Mr. HEDEMAN. Let me say that the answer to that is no. The operational problems are problems beyond our control, generally speaking.

The State contribution problem is the problem.

Mrs. JOHNSON. That is a very serious problem which prevented your being able to take action in a timely fashion and litigation you deal with after the problem was beginning to be addressed. So, from the public's point of view, that matching requirement in the bill is proving to be a very difficult impediment to achieving the goal for which the legislation was written, is it not?

Mr. HEDEMAN. That is correct. It doesn't seem to be an impediment for the construction of highways or sewage treatment facilities. I think a question of whether the public has to direct its focus to the States to remove that impediment.

Mrs. JOHNSON. Thank you.

Mr. HEDEMAN. Remove that at the State level.

Mrs. JOHNSON. Thank you.

Mr. LEVITAS. Thank you.

We are pleased to have joining us today the former chairman of this subcommittee, Congressman Mineta from California, who I now recognize.

Mr. MINETA. Thank you very much for allowing those of us on the full committee to sit in on these important hearings.

First of all I would like to ask Mr. Hedeman, before coming to your present position, do I understand you were a professor at George Washington School of Law?

Mr. HEDEMAN. No; that is not correct. I do that part time at nights.

Mr. MINETA. Do you do that presently then?

Mr. HEDEMAN. Yes.

Mr. MINETA. Prior to that, prior to coming to this position of Director of the Office of Emergency and Remedial Response you were doing what?

Mr. HEDEMAN. I was Director of the Office of Federal Activities at EPA from January 15, 1979, to November 1, 1981, and for approximately 11 years prior to that I was an attorney with the Army Corps of Engineers in a variety of attorney positions.

Mr. MINETA. And your present position you have been in how long?

Mr. HEDEMAN. From November 1981, to today would be what, 14 months? Fifteen months?

Mr. MINETA. Is that a schedule C position?

Mr. HEDEMAN. No; it is not. It is a career senior executive service position.

Mr. MINETA. SES?

Mr. HEDEMAN. That is correct.

Mr. MINETA. And Mr. Lucero, prior to assuming this position of Office of Waste Programs Enforcement, I believe you mentioned July 19, 1982?

Mr. LUCERO. Yes, sir.

Mr. MINETA. Prior to that you were doing what?

Mr. LUCERO. I worked as Mr. Hedeman's Deputy and I worked there from April 1, 1982, until July 19, 1982.

Mr. MINETA. Prior to April 1, 1982, you were doing what?

Mr. LUCERO. Deputy Regional Administrator in region 8, which is located in Denver, which is an EPA region.

Mr. MINETA. OK.

Mr. LUCERO. It has responsibility for region—six States, Colorado, Utah, Wyoming, North and South Dakota, and Montana.

Mr. MINETA. You were in that position in Denver from roughly when to when?

Mr. LUCERO. April 1980 until April 1982.

Mr. MINETA. I wonder if both of you would submit a resume for our record?

Mr. HEDEMAN. Yes.

Mr. LUCERO. Certainly.

[The information received follows:]

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WORK EXPERIENCE

July 19, 1982 - Present

Director (SES-4), Waste Programs Enforcement, US EPA

As Director of the Office of Waste Programs Enforcement Mr. Lucero is responsible for providing national direction for EPA's hazardous waste enforcement program. His duties also include coordinating and providing technical expertise for regional enforcement actions under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response Compensation and Liability Act (Superfund). Mr. Lucero is responsible for the supervision of all nationally significant cases (e.g., Seymour, Chem-Dyne and Love Canal). The Office of Waste Programs Enforcement is comprised of approximately 60 individuals performing scientific, engineering and administrative responsibilities.

April 1982 - July 19, 1982

Deputy Director (SES-4), Office of Emergency and Remedial Response, US EPA

As Deputy Director Mr. Lucero's responsibilities included providing advice and assistance to the Director in managing the "Superfund" program, a $1.6 billion trust fund established by Congress in December, 1980 to provide remedial cleanup of uncontrolled hazardous waste dumpsites and emergency response to hazardous spills.

April 1980 - April 1982

Deputy Regional Administrator (SES-4), US EPA, Region VIII

As Deputy Regional Administrator in EPA's Region VIII, Mr. Lucero managed regional efforts to protect the nation's land, air and water quality. EPA's Region VIII covers the six state area of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

July 1978 - March 1980

Deputy Director, Office of Compliance, ACTION

As Deputy Director for Compliance at ACTION, the Federal Agency for volunteer service organizations such as Peace Corps, VISTA, and Older American volunteer programs, Mr. Lucero's responsibilities included investigation of fraud, waste and abuse in these respective programs, overseas and throughout the United States.

| | |
|---|---|
| April 1975 - July 1978 | Assistant Attorney General for Litigation, Colorado Department of Law<br>As an Assistant Attorney General for the Colorado Department of Law Mr. Lucero was a trial attorney handling a variety of cases involving air and water pollution as well as consumer fraud. He also served as Counsel to the Colorado Passenger Tramway Safety Board, which licenses ski lifts in the state. |
| June 1972 - April 1975 | Attorney, Metropolitan Denver Legal Aid Society |
| | Law Clerk, Health Facilities Foundation, Berkeley California |

## EDUCATION

| | |
|---|---|
| 1970 | B.A., Stanford University |
| 1972 | J.D., University of California at Berkeley (Boalt Hall) |

## PROFESSIONAL ASSOCIATIONS

Admitted to Bar: Colorado and California
California Bar Association
American Society of Public Administrators

## HONORS RECEIVED

EPA - Outstanding Performance Appraisal 1981 and 1982
Graduated cum laude, Stanford University
California State Scholarship Award
Career Appointment to Senior Executive Service

WILLIAM N. HEDEMAN, JR.

HOME ADDRESS:

1605 Crestline Road
Silver Spring, Maryland 20904
(301) 384-9281

BUSINESS ADDRESS:

EPA (WH-548)
401 M. Street, S. W.
Washington, D. C. 20460
(202) 382-2180

EDUCATION:

| | |
|---|---|
| 1960-<br>1964 | Gettysburg College<br>Gettysburg, Pennsylvania<br>Degree: B.A. (Major - Political Science) |
| 1964-<br>1968 | University of Maryland School of Law<br>Baltimore, Maryland<br>Degree: J.D. |
| 1971-<br>1972 | George Washington University<br>National Law Center<br>Washington, D. C.<br>Degree: L.L.M., With Highest Honors (Environmental Law) |

EXPERIENCE:

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| 1981-<br>Present | Director, Office of Emergency and Remedial Response<br>Environmental Protection Agency |

Manages Office under the Assistant Administrator for Solid Waste and Emergency Response, with responsibility over 106 personnel positions, and an additional 150 regional positions. Office oversees the "Superfund" program, a $1.6 billion trust fund established by Congress in December, 1980, to provide Federal response authority to clean up abandoned hazardous waste sites, emergency and hazardous waste oil spills. Serves as Chairman of the National Response Team, a 14 member Federal agency team that can be activated to respond to individual oil and hazardous waste spills and sites.

WILLIAM N. HEDEMAN, JR.

1979-1981 Director, Office of Federal Activities
Environmental Protection Agency

Manage staff office under the Administrator, EPA, with responsibility over 53 personnel positions, and an additional 200 regional positions. Office serves as liaison between EPA and other Federal agencies, including: Departments of Energy, Transportation, Defense, Interior, Agriculture, and Housing and Urban Development; National Oceanic and Atmospheric Administration; U.S. Army Corps of Engineers; and Council on Environmental Quality. EPA's national program manager for:

- Review of all proposed Federal actions (programs, permits, policies and procedures) as to their impact on the environment pursuant to Section 309 of the Clean Air Act;
- Section 404 of the Clean Water Act, which regulates discharges of dredged or fill material into waters and wetlands;
- EPA's compliance with the National Environmental Policy Act, related laws (e.g. Fish and Wildlife Coordination Act, Coastal Zone Management Act, Endangered Species Act) and Executive Orders (e.g. wetlands, floodplains, prime agriculutral lands) as they relate to EPA regulatory and construction grants programs. This includes management of $6.0 million in contract funds.
- Assisting Federal facilities in achieving compliance with Federal, State, and local pollution control requirements pursuant to Executive Order 12088.
- Implementation of EPA's Indian Policy.

1972-1979 Assistant General Counsel for Regulatory and Environmental Programs, U.S. Army Corps of Engineers

Legal adviser to the Chief of Engineers on the development and implementation of permit programs to regulate development in waters of the United States pursuant to the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act. Served as the principal representative of the Corps of Engineers during the formulation and implementation of the controversial Section 404 permit program. Principal legal adviser to the Corps of Engineers on the applicability of NEPA, the Endangered Species Act, Fish and Wildlife Coordination Act, Coastal Zone Management Act and related statutes and policies that were applicable to Corps programs, policies, and permit actions.

WILLIAM N. HEDEMAN, JR.

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| 1971-<br>1972 | Nominated to Water Resources and Environmental Law Fellowship Program sponsored by the National Law Center of the George Washington University and the Corps of Engineers. Received L.L.M. Degree in Environmental Law, with concentration in water resources, wetlands, and coastal zone management. |
| 1968-<br>1971 | Assistant District Counsel, U.S. Army Engineer District, Baltimore<br>Served as legal adviser in the Office of District Counsel to the Baltimore District of the Corps of Engineers over a wide variety of issues, including contract management, real estate transactions, tort claims, and enforcement and administration of permit requirements for water-related development. |
| 1966-<br>1968 | Probation Officer, Supreme Bench of Baltimore City.<br>Managed a caseload of approximately 100 juveniles who were placed on probation by the Supreme Bench of Baltimore City. |

OTHER

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| 1973-<br>Present | Adjunct Professor of Law (Water Resources Law National Law Center, George Washington University, Washington, D.C. |
| 1979-<br>Present | Head of United States Delegation to the Fourth, Fifth and Sixth Consultative Meetings to the London Ocean Dumping Convention, London, England (1979, 1980, and 1981) |
| 1976-<br>1978 | Member, U.S. Delegation to the First, Second, and Third Consultative Meetings to the London Ocean Dumping Convention (1976, 1977 and 1978). |
| 1979-<br>Present | Member (representing EPA) of the Executive Policy Board of the Alaska Gas Pipeline; the Ocean Principals Group; the Outer Continental Shelf Advisory Board; and the Interagency Coal Export Task Force. |
| 1979-<br>1980 | Member, U.S. Delegation to negotiate Compact of Free Association for the Marshall Islands, Federated States of Micronesia and Palau. |

PERSONAL:

Born in Cincinnati, Ohio, October 15, 1942. Raised in Towson, Maryland. Married to Madeline (Gutekunst) Hedeman. Three children -- Eric, Cindy, and David.

Mr. **Mineta**. Are either of you familiar with Dr. Arthur Palotta who worked for a period of time as a consultant to Rita Lavelle?

Mr. **Lucero**. Yes.

Mr. **Hedeman**. Yes.

Mr. **Mineta**. And do either of you know whether he had clients in his own practice that were involved in any Superfund sites?

Mr. **Hedeman**. I do not have any knowledge of that.

Mr. **Lucero**. Nor do I, sir.

Mr. **Mineta**. Did Dr. Palotta sit in on any meetings or enforcement strategy sessions on any sites?

Mr. **Hedeman**. Yes, sir.

Mr. **Lucero**. I think—I don't remember Mr. Palotta sitting in on any meetings that I held with the Department of Justice or the Office of Legal and Enforcement Counsel to talk about strategy, but he did sit in, as I recall, in meetings where all of the program and enforcement people were together to talk about strategy. I think we talked about enforcement strategy at that time.

Mr. **Mineta**. Mr. Hedeman, which ones could you recall for us that he might have either sat in on meetings or where enforcement strategy was discussed?

Mr. **Hedeman**. I can only address meetings that I had with respect to funding out of the trust fund as opposed to enforcement. So——

Mr. **Mineta**. Would you furnish those for the record?

Mr. **Hedeman**. Yes. I would have to—I can only give you—I know he was involved, for example, in a number of discussions on the Missouri dioxin situation.

He was involved in the Fort Smith PCB contaminated soil discussions. My memory just isn't helping me on that.

Mr. **Mineta**. Fine. If you would submit that for the record.

[The information received follows:]

## LIST OF MEETINGS ATTENDED BY WILLIAM N. HEDEMAN, JR., AT WHICH HE REMEMBERS DR. ARTHUR PALLOTTA WAS ALSO PRESENT

June 14, 1982 -- Proposed removal action at Holder Chemical, Ona, WV

June 18, 1982 -- Proposed removal action at Bridgeport Rental and Oil, Bridgeport, NJ

July 9, 1982 -- Dr. Pallotta; general discussion

August 30, 1982 -- Proposed actions for Missouri dioxin, MO

September 14, 1982 -- Proposed actions for Missouri dioxin, MO

September 27, 1982 -- Proposed actions for Missouri dioxin, MO

October 1, 1982 -- Proposed removal action at Mill Creek, Erie, PA

October 1, 1982 -- Proposed removal action at Fort Smith, AK

October 7, 1982 -- Proposed removal action at J&L Drum Site, Memphis, TN

October 25, 1982 -- HHS FY 83/84 budget request

November 17, 1982 -- Briefing for AA on Dioxin in Missouri

November 19, 1982 -- Proposed removal action at drinking water contamination, Kimberton, PA*

November 22, 1982 -- Briefing for Rita Lavelle on HHS funding

December 21, 1982 -- Risk assessment methodologies

February 1, 1983 -- Proposed removal at ground water contamination, Peridido, AL

* Not sure if Pallotta and Hedeman attended same meeting

Mr. **Mineta**. Mr. Lucero, again, if you would submit from your own records whatever sessions that he might have sat in on.

Mr. **Lucero**. I can only think now—I will go back and attempt to expand this—but I can only think of two where there may have been enforcement strategy discussed, that would have been on the dioxin sites in Missouri where enforcement strategy may have been discussed and the funding issues.

And I can recall, I believe, a large meeting that he may have sat in on, although I can't quite recall, involving Waukegan Harbor, where the Justice Department, Office of Legal and Enforcement Counsel, and the U.S. attorney, I believe, came forward to make a presentation of proposed remedies. I think that was October, perhaps.

Mr. **Mineta**. Besides either of these meetings or enforcement strategy sessions that you both mentioned, did Dr. Palotta ever ask to be briefed on any sites?

Mr. **Hedeman**. Again, I have difficulty answering that question because I cannot personally recall, based on my memory, any request to me. But he had full access to my staff.

Mr. **Lucero**. Mr. Mineta, I remember one additional series of discussions that Dr. Palotta involved himself in, and that was the discussion of the final settlement proposal in the Olin Triana case.

Then I can also recall, in response to the last question you just asked, right now only one case where he asked to be briefed: on the Globe Arizona case.

Mr. **Mineta**. Any others?

Mr. **Lucero**. I can't any others now.

Mr. **Mineta**. If you recall any others, would you submit those for the record?

Mr. **Lucero**. Yes.

[The information received follows:]

TAB C:

LIST OF MEETINGS ATTENDED BY OWPE STAFF AT WHICH PERSONNEL REMEMBERS DR. ARTHUR PALLOTTA WAS ALSO PRESENT.

| DATE | TIME | SUBJECT |
|---|---|---|
| Friday, October 29, 1982 | 2p.m. | Globe |
| Monday, August 30, 1982 | | Region VII Dioxin Sites - Risk Assessment Calculations |
| January | | Olin/Triana |

**Mr. Mineta.** Do you know why he was selected and why was he in Ms. Lavelle's office? In fact, why was it even necessary to have a consultant in that office?

**Mr. Hedeman.** I have no direct knowledge as to how he was selected. He was a toxicologist who was advising Ms. Lavelle on decisions that she had to make. There are also a number of toxicologists within the Agency itself. I found that he was present—the reason I am struggling is that I can't remember the names of the sites.

But he was primarily present at decisions that she had to make immediately in terms of whether an emergency situation existed requiring the immediate expenditure of funds out of the trust fund for what we call an immediate removal, and the criteria are essentially that there is an immediate and significant threat to public health of an acute nature. And she sought his advice in those meetings as to whether in his judgment that existed.

**Mr. Mineta.** Even with staff toxicologists available?

**Mr. Hedeman.** They were available within the Agency but I cannot recall that in any of these meetings they were present. My staff and I were present.

I am—that is probably not being responsive to your question.

**Mr. Mineta.** Mr. Lucero?

**Mr. Lucero.** I don't have any direct knowledge of why or how he was hired, Mr. Mineta.

**Mr. Mineta.** In your Office of Waste Programs Enforcement, do you have any toxicologists?

**Mr. Lucero.** I had a toxicologist who, unfortunately for me, decided to move to Missoula, MT, in the middle of August. I consider that to be, from my needs, a valuable resource. Right now I do not have a toxicologist. I have several technical people who have an understanding of toxicology and who can, for me, access the Agency's toxicological resources.

**Mr. Mineta.** Have you utilized the services of Dr. Palotta?

**Mr. Lucero.** Not really.

**Mr. Mineta.** Let me go on to another subject here and that is, who was Mr. Chip Wood?

**Mr. Hedeman.** Mr. Chip Wood was acting as Ms. Lavelle's chief of staff to her staff office.

**Mr. Mineta.** All right.

**Mr. Hedeman.** Prior to that time he was in some capacity in the Office of Policy and Resource Management in the Agency. He came in, as I understand it, as a political appointee.

**Mr. Mineta.** So both of you did have contact with him in that capacity as chief of staff to Ms. Lavelle?

**Mr. Hedeman.** That is correct.

**Mr. Lucero.** Yes, sir.

**Mr. Mineta.** Did he ever get involved in the substance of any cases or ask for briefings about the details or status of any cases?

**Mr. Lucero.** I don't believe Mr. Wood ever asked for a briefing. I think he may have been aware of some of the work going on, but only in the most general way. These are things that were happening.

**Mr. Mineta.** Mr. Hedeman.

Mr. HEDEMAN. I would generally agree with that assessment. I can't recall any incident where he specifically asked for a briefing of any site.

Mr. MINETA. Did he routinely sit in on any meetings with you or your respective staffs or with the attorneys involved on a case?

Mr. LUCERO. He did not routinely sit in on any meetings of the nature you have described.

Mr. HEDEMAN. In my case, which would be the funding aspect as opposed to enforcement, I can just vaguely remember him wandering in and out of the door occasionally on a meeting, and I am not even able to tell you which meeting that was. It was very infrequent.

Mr. MINETA. Do you know if he ever met with any defendants in a waste site case with not a member of your staff being present?

Mr. LUCERO. No, sir.

Mr. HEDEMAN. No.

Mr. LUCERO. I have no direct knowledge of that.

Mr. HEDEMAN. I do not either.

Mr. MINETA. Did anyone ever approach you about having Chip Wood or Bill Barnich sit in on any meetings involving the development of strategies for enforcing a case?

Mr. LUCERO. I believe the person's name is Bill Barnich.

Mr. MINETA. How is that spelled?

Mr. LUCERO. B-a-r-n-i-c-h.

Mr. MINETA. Thank you.

Mr. LUCERO. And I don't recall any such request, although it is possible that Mr. Barnich would have sat in at the point where a decision was—had been reached and we were concerned about who to advise Members on the Hill, for example. That was his role, was apparently to serve as a congressional liaison.

Mr. MINETA. Do you have any knowledge, Mr. Hedeman, of Chip Wood or Mr. Barnich sitting in on meetings involving the development of strategies for enforcing a case?

Mr. HEDEMAN. I do not recall any of that.

Mr. MINETA. Are either of you familiar with a report about the $50 million of Superfund moneys unaccountable recently released by the EPA inspector general?

Mr. HEDEMAN. Yes, sir, I am. Regrettably, I brought the wrong red briefing book, so I am going to have to rely on memory here.

It is the practice of the inspector general to do an audit each year of the Superfund expenditures and to either approve them, disallow them or set them aside.

The $53 million that has been reported in the press was moneys that have been set aside of the $180 million obligated in fiscal year 1982.

By setting aside the money, the inspector general is essentially saying he is unable to render a definitive opinion because of a lack of verifiable supporting evidence for these expenditures.

This does not mean that obligation was either improper or unaccounted for. It means that people who keep the books didn't do a good job.

Of the $53 million that he set aside to essentially call the bookkeeping people together and tell them to get that audit data available, $16 million of it was set aside for all of the personnel compensation and benefit moneys coming out of the Superfund Program.

The reason for that was a requirement that we specifically for each person in the Agency who is working on Superfund, specifically allocate which part of their weekly effort is Superfund and which part is some other function of the Agency. That is put on a time card, and then entered into a computer.

The people who do that, the bookkeeping people, enter into the computer the fact that they have worked 80 hours, but failed to turn the card over and report the allocated number of hours to Superfund versus non-Superfund work.

Thus, the entire salary account was set aside by the inspector general until that could be corrected.

The second major chunk of money in this questioned amount was $34 million which was related to contracts that the Agency has which support both the Superfund Program and other programs.

For example, research and development, water quality, air quality, toxic substances, et cetera. The Agency negotiates what are called mission contracts to buy *x* number of hours of work from a contractor. For example, 100,000 hours at a certain price, and then each program applies its money to purchase a subset of those hours.

The accounting people failed to properly document how much money was allocated for Superfund versus how much money is allocated for air, water, toxic substances, et cetera, in essentially 34 million dollars' worth of total contracts, and so the IG has said, in effect, you got to go back and clean up the records to do that.

We have all of the data to do that. It is merely to go through the bookkeeping exercises of bringing the records up to, frankly, what they should have been but for the bookkeeping people in EPA failing to carry out this responsibility.

Only $178,000, which is less than one-tenth of 1 percent, was actually questioned by the IG. I don't have in front of me any direct notes that indicate what that is for, but I believe it dealt with travel and salary accounts in one of our regional offices which we are moving to correct.

Mr. MINETA. When Ms. Lavelle was here testifying, she was saying in response to my questions on this issue, saying that items were being charged to Superfund because other programs didn't have sufficient funds to account or to be able to take care of certain kinds of expenses.

Mr. HEDEMAN. To the extent that I can respond to that, I can say that only $178,000 is at issue there, and the remainder of it is not.

Mr. MINETA. Why was it so? I am not sure that one-tenth of 1 percent, the $178,000, it seems to me that there are other areas, salaries and the S&E account also, where there were other programs that you were not able to accommodate those funds or expenses, so that they were charged to Superfund, and it seems to me that it was very easy for others in the Agency to get this Superfund to pay for their activities.

Mr. HEDEMAN. I can only say that that appears to be a problem in one regional office, based on the inspector general's audit and that would be roughly the $178,000. Otherwise, we have been exceptionally careful in ensuring that that does not happen.

Mr. MINETA. Who is responsible for keeping track of all of this?

Mr. HEDEMAN. The Office of the Assistant Administrator for Administration.

Mr. MINETA. In OSWER or within the Agency itself?

Mr. HEDEMAN. That position was occupied by Dr. Horton until last week as the Assistant Administrator.

Mr. MINETA. When do you think that this accounting is now going to be completed?

Mr. HEDEMAN. I would have to supply that for you. I do not have any direct information from them.

Mr. MINETA. Is there a time line that has been established by the inspector general's office as to when this has to be submitted back to them with the proper documentation?

Mr. HEDEMAN. I just do not know, sir.

Mr. MINETA. You made mention a little while ago to a strategic management plan?

Mr. LUCERO. Yes, sir.

Mr. MINETA. What is it?

Mr. LUCERO. A document that we prepared at Ms. Lavelle's direction which would, considering the resources that the Administrator made available to us, including the additional resources, what we thought we could accomplish in both the RCRA and CERCLA enforcement.

It was intended to reflect a policy guidance that we had received from Ms. Lavelle and as heard from other places, as well.

Mr. MINETA. This details all of the 419 sites or the 15,000?

Mr. LUCERO. The 15,000 is not yet my responsibility. Mr. Hedeman's staff reviews that.

What it is, it deals with, in the case of just 418, which is only one component of this, it deals with some general strategies as to how we will approach it, what we will attempt to accomplish, how many resources would be necessary; this is that document.

Mr. MINETA. Mr. Lucero, earlier you were saying that Mrs. Gorsuch-Burford was desirous of disclosing the contents of those enforcement files but she was being advised by others not to do that; is that correct? She was inclined to be forthcoming?

Mr. LUCERO. Yes, sir, I based that statement of mine on a meeting that I had been invited to on Sunday, December 12, I believe, where we were talking about what needed to be done, and I remember raising that point to her and she said, "Yes, I would like to consider it." Then she turned to Mr. Perry and said, "Is there some way, I would like somebody to explain to me what we can and can't do."

I read that statement as support for what I said. It was Mr. Perry's call, and I assume he went to talk to the people who were making the decisions.

Mr. MINETA. And the contempt citation is on the 16th of December; is it not?

Mr. LUCERO. Yes.

Mr. MINETA. Yet she makes the statement that she would go to jail before she releases the documents and allows the Members of Congress to see them? Does that really square?

Mr. LUCERO. I think that is what was expected of her, sir, and she was prepared to do it.

Mr. MINETA. Facing a contempt citation?

Mr. LUCERO. She understood that she was under directions and was prepared to do what she had been instructed to do.

Mr. MINETA. Is that something she said to you?

Mr. LUCERO. No, sir, I sat in the December 16 hearing before this whole committee. I happened to hear her statements. She did not say those kinds of statements that I recall during that particular meeting on December 12.

Mr. MINETA. I have no further questions, Mr. Chairman.

As you are probably well aware, I sit on the Select Committee on Intelligence here in the House of Representatives. I have never seen such a cat and mouse game as this committee has had to go through to get information.

It seems to me we have to ask the right questions and you will narrowly construe those questions and answer it in that way, no more, no less. It seems to me that for an oversight subcommittee to try and deal with the issues of whether or not the law is, needs expansion, contraction, whether we need authorization for more money for doing things, that the executive agency ought to be as open as possible.

It seems to me in an open society, that is the case, but with this Agency, under your stewardship we haven't gotten it. I am just wondering what we have to do to get straight answers around here, because we may not know the questions to be asked.

You are sitting there playing that cat and mouse game. I, for one, as a Member of this Congress trying to be a responsible Member looking out for this program and others, I don't like it.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Mineta.

Mr. HEDEMAN. May I respond to that?

Mr. LEVITAS. I am going to give you a chance to in just a minute.

I would like to say this. I am going to ask some very specific questions in just a moment, and I may not have expressed myself as eloquently or forcefully as Mr. Mineta has, but I think it would certainly make a lot of difference to me if I felt that you could be more forthcoming.

If we didn't hit the bull's-eye, but got close, you might help us out a little bit on that.

Mr. HEDEMAN. I personally have been trying to do that this morning and that is why I do have to take exception to what Mr. Mineta has said.

Mr. LUCERO. I would like to make the statement, comment, Mr. Levitas, that we are here and we said in our opening statements that we would try to provide you with whatever we could.

The Administrator has gone on record saying we would like to do this.

Mr. LEVITAS. What I think Mr. Mineta is saying, for example, Mr. Molinari asked a question about your knowledge of certain contacts with certain people, and your response was you had no direct personal information, and Mr. Mineta asked a series of questions about this doctor, and your answers were accurate, but they seemed very narrowly construed.

We are trying to find out just what the devil is going on down there. So if you could expand, maybe lead us into some of these nooks and crannies.

You are being frank and candid, but I would like you to carry us that little extra step of the way that you may know that we don't know.

Mr. **Hedeman**. If I am cautious, it is that I have come here wanting to be of service to this committee as much as possible, mindful of the new word of perjury and am fearful, frankly, that my memory today may not be as good as it perhaps would be after this hearing is over with or in weeks to come.

Mr. **Levitas**. I understand, and in fact, I am going to offer both of you the opportunity to submit for the record any additional information you may have on matters that have been asked of you during this.

Let me get into one area.

Mr. **Lucero**. My concern is the same as Mr. Hedeman's; that a lot of people whose memories seem to be bad are suddenly being charged with possible perjury, and it is important to be careful.

Mr. **Levitas**. I am well aware of that, and I think that it is important that everybody is mindful of it.

Mr. Lucero or Mr. Hedeman, were you present at a meeting on May 28 of last year at which Ms. Lavelle was present in which mention was made of the Stringfellow, CA, Stringfellow site in California, and the fact that one of the responsible parties was Aerojet Corp., or a subsidiary or an affiliate of Aerojet?

Mr. **Hedeman**. I cannot recall being at the meeting and I have checked my calendar and it shows that I was on sick leave that day.

Mr. **Levitas**. Mr. Lucero?

Mr. **Lucero**. Yes, sir. It is on my calendar and I have no personal notes. I have gone back and checked.

I have also checked. I do know some of the people who were present and a number of them are on my present staff and I have gone back and checked their notes and they record me as being there.

I have a vague recollection of being at that meeting, and I have some recollection of the discussion of Aerojet but I have told the people I have talked to about this, I can't recall that it occurred at that meeting.

On the other hand, I have looked at the notes that my staff people kept, and they indicate that the issue was brought up, so my recollection is just not terribly good at that.

I can't recall whether I got up and left or not.

Mr. **Levitas**. Who were the other people present at that meeting, as best as you can recall?

[No response.]

Mr. **Levitas**. Where the meeting occurred?

Mr. **Lucero**. It occurred in one of the conference rooms adjacent to Ms. Lavelle's office. It was an early morning meeting.

The people who were present included Mr. Frank Biros, Mrs. Debbie Dalton, a regional coordinator for me.

Mr. **Levitas**. How did Mr. Biros get over there?

Mr. LUCERO. On May 28 I was Mr. Hedeman's Deputy, not in the Enforcement Division.

Mr. Biros had been in that office at the time I came to Washington. He had been on the Hazardous Waste Task Force from its inception in 1980, so he was a longstanding member of the office.

Lamar Miller, who was the Acting Director of the Office of Waste Programs Enforcement. I believe Mr. Ed Kurent, Acting Associate Enforcement Counsel for Waste at the time; and then, as I recall the notes, Jan Wine and Stephanie Delre, who would have worked for Mr. Hedeman and myself in the area of cooperative agreements.

Now, there may have been other people.

Mr. LEVITAS. Do you have the staff notes with you or can you make them available to the subcommittee?

Mr. LUCERO. They have been made available to the Dingell committee. Would you like an additional set?

Mr. LEVITAS. We would like copies of them. It is not my purpose to get into the Stringfellow site in any great deal because Congressman Dingell and his subcommittee are going to do a very thorough and complete job into the investigation of that matter and I see no reason for us to duplicate that matter.

Because of Ms. Lavelle's testimony before this committee, as well as before a Senate committee, that she first became aware of the involvement of Aerojet General in the Stringfellow site on June 16 or 17, and the information that we have had which is somewhat corroborated by your testimony today that the matter was brought up at an earlier meeting in May, we need to make our record as complete as we can through those people who have information.

I want to characterize what you have told me. If I am not correct, please tell me. As I understand what you have said is that you, because of your having seen staff notes in your calendar, you now believe that you did attend such a meeting, and that the matter of Aerojet General was discussed at that meeting?

Mr. LUCERO. I am not certain about that because I think I may have had to leave, and yet the notes reflect that it was discussed.

I have some sense that there was a discussion.

Mr. LEVITAS. Was Ms. Lavelle at that meeting?

Mr. LUCERO. To the best of my recollection.

Mr. LEVITAS. Do you recall that she was there?

Mr. HEDEMAN. Me?

Mr. LEVITAS. You were not there. You were sick.

Mr. LUCERO. Do I recall that?

I think so. It is not clear to me. I think she was. Well, I take it back. I have read the notes, and I do know the purpose of the meeting was to brief her, so as far as I am concerned, she was there.

Mr. LEVITAS. OK. Following up on Mr. Mineta's question about Dr. Palotta, you have described some of the meetings and some of the access that he had. Isn't it correct that he had access to the enforcement strategy discussions or enforcement discussions as well as the documents relating to enforcement matters?

Mr. LUCERO. I guess he did have access if he came and asked.

Mr. LEVITAS. Do you have any recollection of that?

Mr. HEDEMAN. I do not. He would have access to my program files if he came and asked.

Mr. Levitas. Was he an employee at the Environmental Protection Agency or a consultant?

Mr. Lucero. To the best of my knowledge, he was a consultant.

Mr. Hedeman. I would confirm that.

Mr. Levitas. We need to go back and look at some earlier transcripts of testimony in which this committee received assurances that consultants did not have access to these so-called enforcement sensitive documents that we were being denied and I am asking the subcommittee staff to take a look at that.

That is why I thought Mr. Mineta's questions were very pertinent.

Mr. Hedeman, do you, are you known by the name "Bill," or do they call you "William"?

Mr. Hedeman. I am known by Bill. Some of the folks up here call me Willy. I am called William by the Administrator, for some reason. I sign most of my correspondence to her as William.

Mr. Levitas. When you use your initials, like on a memorandum that you have generated where you initial it off, do you use the initials W.M.H., Jr., or B.H., or what?

Mr. Hedeman. I use W.H.

Mr. Levitas. The so-called infamous memo in which the initials W.H. appear.

Do you have any information? Had you been consulted? Were you asked? Did you expect to get a memo from Miss Lavelle or Mr. Ingold concerning the forthcoming meeting with Mrs. Gorsuch?

Mr. Hedeman. Let me talk about that memo for a moment. In recent weeks I am starting to get memos to me with W.H. in quotation marks.

The existence of that memo first came to my attention on a Friday in January, the latter part of January; and I would have to provide you the date, only in the sense that a staff person told me that a memo that fit the description of the one that I think you are talking about had been turned over to the New York Times.

I felt that I should advise Miss Lavelle of that. I was leaving shortly after that to go to St. Louis. Because it was told to me that the content of the memo had a provision in it, or a statement in it dealing with the major constituency of the agency being business, I went to Miss Lavelle sometime around 1 o'clock that afternoon, and advised her that this was the latest rumor in the hall. And her response was that—great surprise in terms of knowing of the existence of the memo.

I traveled to Times Beach and to other parts, did not return to the Agency until the following Wednesday, when new developments seemed to be emerging and the existence of the memo at that time had gotten out into the circulation.

After Miss Lavelle left the agency, I had a copy of it, as well as the index which has the memo to W.H. on it. It was left on my secretary's desk, and I read the memo. Frankly, I never saw the memo before, and I cannot envision why such a memo would come to me.

Mr. Levitas. I guess that answers my question.

Had you been consulted by Mr. Ingold or Mr. Wood subsequently as to what appeared in the memo regarding the content of that memo?

Mr. Hedeman. I cannot recall any conversation being consulted.

Mr. LUCERO. I had on one or two occasions been confronted by Mr. Wood, and he indicated that he was concerned about difficulties that Rita was having, and I think we—at that point we had had a number of discussions about problems. I think we may have discussed some of them.

However, my discussions occurred with him in December, as I recall, and, as Mr. Hedeman stated, the first time I became aware that such a document had been created was by the same staff member on the same day, and I would note that I also went to Miss Lavelle and told her of the rumor of the document and what it apparently covered.

And, again, her reaction which was independent of the discussion Mr. Hedeman had, was one of complete surprise and shock.

Mr. LEVITAS. How could she be surprised twice? Whoever got there first should have eliminated the element of surprise.

Mr. LUCERO. She was concerned about the implications of the impact. She didn't know how to react.

Mr. LEVITAS. Mr. Hedeman spoke to her about 1 o'clock in the afternoon?

Mr. LUCERO. I spoke to her before lunch.

Mr. LEVITAS. The language of that memo, things like Mr. Perry, assuming that is the "he," was systematically alienating the primary constituents of this administration and the business community.

Mr. LUCERO. I assume Mr. Ingold made those conclusions himself. I have never seen the talking points, but I will tell you this, that I did watch a tape of your interview with Miss Lavelle, and I have some knowledge, not of her interview, but her appearance before the subcommittee, and you went over a number of those details.

This is not atypical of my experience with some of the staff people there, that they were imprecise and wrong with their facts, and the conclusions they drew were their own.

Mr. LEVITAS. Do either of you know what was covered or meant by the statement in that document which I will now read:

"Kearney—set us up and didn't tell us until the last moment; bootlegged copies were the only thing that saved us. Going to use it to embarrass R.M.L."

Do you see what that talks about?

Mr. LUCERO. Yes, sir, I do.

Mr. LEVITAS. What is that?

Mr. LUCERO. There was a hearing before Mr. Dingell on November 19. There had been—it was unclear what the full subcommittee matter of the hearing would cover. It was clear it would cover Fort Smith and the dioxin sites.

At the last minute, like 1 or 2 days before the hearing, a number of documents were produced, bootleg documents from Mr. Perry's shop that had been created for the record, and they basically established that there was serious concern with the use of the Kearney contract.

Those statements which were from Ed Kurent, and the one on Kearney only was from Mr. Kurent to Mr. Brown, had been generated sometime earlier. It was the first time that those had been brought to our attention, or that those concerns had been reiterated.

The basic conerns that Mr. Kurent raised had been discussed with him in September, and to my impression had been resolved or at least passed on.

He obviously felt differently and wrote this document, and it became necessary for us to prepare to respond to questions. We were not aware that the committee had those documents. They requested them at the last minute.

It was clear they were created much earlier and we had not been apprised of the position that Mr. Kurent had taken.

The actual documents were only requested by us the day of the hearing. Mr. Wood received a bootleg copy.

Mr. LEVITAS. What was Kearney a contractor for?

Mr. LUCERO. The Office of Solid Waste has a mission contract which is held by A.T. Kearney, a consultant firm that provides environmental services.

Mr. MOLINARI. At this point I would appreciate if we could get into the record the fact that we are not talking about Congressman Carney.

Mr. LUCERO. No, sir.

Mr. MOLINARI. Reference to Mr. Carney was made during earlier testimony when Mr. Ingold was asked the question as to who Kearney was, and he indicated Congressman Carney, which caught us all by surprise.

I went to Congressman Carney and asked him what it was all about. He said he was completely flabbergasted and didn't know anything about it. I am happy to see we are getting some light shed on that today.

Mr. LUCERO. This lack of attention to the facts was one problem that we were constantly having to deal with there, and you just pointed out another one that I wasn't even aware of.

Mr. MOLINARI. Thank you.

Mr. LEVITAS. I am very pleased that we have been able to shed some additional light on that.

Mr. Hedeman, have you had an opportunity yet to discuss the shredders? Mr. Lucero was here before the full committee on one occasion.

Mr. LUCERO. For about 4½ hours.

Mr. LEVITAS. We will break that record today maybe, but I hope not.

As I understand it, there were two shredders?

Mr. HEDEMAN. That is correct.

Mr. LEVITAS. One of them was in Mr. Lucero's area, and one was in yours? There is some question about whether or not there was a log, no question there was no log in connection with Mr. Lucero's—I don't want to say Mr. Lucero's shredder—but I will use it to identify——

Mr. LUCERO. How about if you just say the enforcement shredder?

Mr. LEVITAS. All right, the enforcement shredder.

Tell me about the Superfund shredder.

Mr. HEDEMAN. I don't have much to tell. I didn't know I had a shredder in my program until I got back one day and found about

20 bags of shredded material lined up like soldiers down the hall ready to go to the trash. I was told that a shredder had come into my office, and to this day I have never seen the shredder. I wouldn't know what one looked like if it came up and kissed me.

I have no idea who operated it, how it was operated, when it was operated, whether there were logs kept. I have only been advised by staff after the fact that it was essentially used to destroy the, excuse me, proprietary confidential data that we received from contractors who were bidding on the two major support contracts for the Superfund Program, which is a common practice.

Mr. LEVITAS. You testified—well, let me put it into a time context.

What date was this that you first saw the 20 bags of shredders lined up—shredded material?

Mr. HEDEMAN. I honestly don't remember. It was sometime in January.

Mr. LEVITAS. You said you got back. Were you out of town?

Mr. HEDEMAN. I was at a meeting, and I remember coming back late at night, or late in the afternoon.

Mr. LEVITAS. Those bags were not there when you left for the meeting earlier in the day?

Mr. HEDEMAN. That is right. I can see in my mind green plastic bags lined up down the hall; but they were gone the next morning.

Mr. LEVITAS. Could you make an effort, when you go back to your office, to try to identify the day that that occurred by looking at your calendar to see when you went to the meeting?

Mr. HEDEMAN. I can try, but I honestly don't think I am going to be able to do that, because the shredder incident, as it were, did not emerge until long after that, and——

Mr. LEVITAS. Was that the only evidence that you had seen of shredded material?

Mr. HEDEMAN. Yes.

Mr. LEVITAS. Did you ever see any pieces of shredded material on the floor in the hallway?

Mr. HEDEMAN. No.

Mr. LEVITAS. After that occasion, which you think may have been January, did you ever see any other bags of shredded material?

Mr. HEDEMAN. I cannot recall ever seeing any. That doesn't mean they didn't exist. It appeared that somebody had gotten very ambitious and done a significant job of shredding that particular day.

Mr. LEVITAS. In a short period of time, too?

Mr. HEDEMAN. I don't know whether the bags were just awaiting being moved out into the hall, because the cleaning people won't take them out of the offices, and I first saw them at that point.

Mr. LEVITAS. Barbara Borras.

Mr. HEDEMAN. She works for me.

Mr. LEVITAS. What is her job?

Mr. HEDEMAN. Administrative officer, who essentially, among other things, is responsible for procuring all sorts of equipment, typewriters, maintaining files.

Mr. LEVITAS. She, according to our evidence, is the person who signed whatever requisition form was necessary to get those shredders into the office of OSWER?

Mr. HEDEMAN. My office.

Mr. LEVITAS. On that document she wrote as the justification something to the effect that we needed to destroy public sensitive documents. Do you know where that justification came from?

Mr. HEDEMAN. I do not. As the shredder incident evolved into essentially what we have today, I personally had this sinking feeling that I could never recall signing a purchase request for the shredders. I sign all these things, and indeed I am advised that I did not sign such a purchase request, so I would not have seen any of that.

Mr. LEVITAS. But you don't know where that language came from, or do you know?

Mr. HEDEMAN. I do not, sir.

Mr. LEVITAS. Ms. Borras, is she a GS-7, or do you know?

Mr. HEDEMAN. GS-11.

Mr. LEVITAS. Now, do you have any information as to who used the shredders in your office, and whether there was a log maintained on what went through the shredder?

Mr. HEDEMAN. I am sorry, I do not have any information.

Mr. LEVITAS. Did I understand you to say that you never saw it?

Mr. HEDEMAN. I have never seen a shredder. The only shredder I have ever seen in my life was on one of the nightly news stations, a picture of one.

Mr. LEVITAS. Let me move into another area that is of some, that has been the subject of some discussion, the extent to which political considerations may have been taken into account in making decisions in the Superfund Program or the enforcement of the Superfund Program.

Now, this is one of those areas, gentlemen, where my request of being forthcoming will be of some help to us, and I think it is much better for everybody concerned for us, if there is any information that it just come out rather than be extracted or developed in some other way.

I am going to ask a general question, and then a couple of specific questions.

Do either of you have any information about discussions of political considerations being taken into account in the administration of the Superfund Program or the enforcement of actions relating to hazardous waste sites, either with respect to the decisionmaking itself, settlements, litigation, timing of announcements, or matters of that sort?

Mr. HEDEMAN. There were a number of discussions with respect to timing of announcements. I cannot recall ever having any discussions on any site involving political considerations, as to whether or not a decision should be made. But I can represent there were considerable discussions on the timing of announcements.

Mr. LEVITAS. And the location of those announcements?

Mr. HEDEMAN. That is correct.

Mr. LEVITAS. Mr. Lucero?

Mr. LUCERO. I agree with Mr. Hedeman's statement. First of all, there were considerable discussions about timing and location of announcements of actions, and I was aware of some of the cooperative agreements and those considerations.

In terms of effect, I don't remember your exact words, effect on a decision.

Mr. LEVITAS. I put it in two ways, in connection with decisions with respect to settlement or litigation of any matters relating to Superfund or enforcement, as well as to the timing of announcement of actions or decisions.

Mr. LUCERO. I don't have any direct knowledge that there were, that those considerations were taken into account with regard to those kinds of things, either with regard to funding or enforcement.

However, I am aware that there were, I think you need to have appreciation for just the atmosphere at EPA generally, and maybe within OSWER and within the Office of Legal and Enforcement Counsel, so far as I know, that there was a constant feeling that decisions were being made. There wasn't any information to support it, as far as I know, but there was a feeling that they were being made.

I will go so far as to say that I probably made such statements myself.

Mr. LEVITAS. With respect to political considerations?

Mr. LUCERO. That is correct.

Mr. LEVITAS. During the period of, say, September 1982 through the end of October 1982, according to information I received, there were an unusual number of announcements made in parts of the country with respect to Superfund actions, and it was on television the other night, something to do with the announcements in New Jersey.

Were either of you involved in that process? Did either of you counsel or participate, or were you pressed into service in connection with that? I don't want to play games about it. I said the other day to Miss Lavelle, it would not come as a great shock to me to know that during a period of elections that people in agencies, certainly at the political level, were making decisions that would have political significance, and I don't think that is unique with this administration.

I am trying to get the record clear on this. Did it happen?

Mr. HEDEMAN. I would agree that "pressed into the service" is probably the best way to describe it. First of all, we were under intense criticism, primarily by Congressman Florio, that we were not moving the funds or spending any money. He was representing, among other things, that we were holding back the money to balance the budget. That bothered Miss Lavelle considerably, and we had at the time, I can't recall the exact date that we put it into place but we had what was called an obligation strategy in which we were tracking very closely sites that had the potential of being funded by the end of fiscal year 1982, which was September 30.

Our goal was to essentially obligate all of the money that Congress had appropriated to us for fiscal year 1982 earmarked for site cleanup by that date. A number of those decisions were delayed during the first two quarters of that fiscal year for a variety of reasons, including policy development and the national contingency plan being published. And I could probably provide others, if I thought about it for a moment. But it became apparent that it would all crash down to the last quarter of the fiscal year.

So I don't want to give you the impression that everything suddenly took off in September. There was an awful lot on the runway from, say, March, April, May, that I fully expected would all of a sudden happen in September, and our major month for obligating money was that date, and the goal was to get it out before September 30, which was the end of the fiscal year.

In that context, there were a number of projects moving along in various States that I sent up to Miss Lavelle for signature, either as contracts or cooperative agreements, that once she received, she turned over to her immediate staff to develop an announcement strategy.

I had no involvement in the development of that announcement strategy other than that my staff provided draft press releases and draft factsheets, and things of that sort. But once we turned it over to her for signature, it then went to Sue Baldaga, Gene Ingold, and Earl Voss.

Mr. LEVITAS. Would you spell that last name?

Mr. HEDEMAN. V-o-s-s.

Mr. LEVITAS. First name?

Mr. HEDEMAN. Earl—who subsequently left her office several months ago and now is the Deputy Director for Public Relations.

On several occasions really with very little notice, I was requested to go along for the announcement.

Mr. LEVITAS. What do you mean by very little notice?

Mr. HEDEMAN. I can recall on one occasion being in a meeting negotiating in September the two major support contracts which were roughly $150 million and being told that I had to be on a plane to Columbus, OH, by 2 o'clock and I was back by 7 o'clock.

That was to handle one announcement. In that case we flew to Ohio, met personally with the Governor of Ohio, Governor Rhodes, there was an announcement that roughly $800,000 would be made available to clean up a site in Cleveland. We were then put on the Governor's plane and flown to Cleveland where our second announcement was made; got on another plane and came back here that night.

Mr. LEVITAS. Let me tell you what the significance of that is and I am sure that is just an illustration, and Mr. Lucero will get an opportunity to contribute, also.

But if all of this was sort of in the planning process and it was just sort of in an—come to fruition in September or October, before September 30 if possible, and it was just on a routine track it would seem to me that a high-level official, career civil servant, who was in the midst of negotiating two very—working on two very important support contracts would at the last moment be sort of dispatched, if you will, to do something of this sort. Can you help me any more with that?

Mr. HEDEMAN. I had no plans to go to Cleveland, Columbus, or anyplace else in Ohio when I got to work that morning.

To be very honest with you I felt extremely uncomfortable in these types of situations.

Rita asked that I go along with the event that there were technical questions that came up and in that particular incident in Ohio I don't recall opening my mouth the entire trip.

Mr. **Levitas.** You went with Ms. Lavelle?

Mr. **Hedeman.** I went with Ms. Lavelle. We then went from—Columbus is the county seat of Ohio——

Mr. **Levitas.** State capital, yes.

Mr. **Hedeman.** That is where we went. We flew from Columbus to Cleveland and we met with the family involved in this particular site. We came out of their home and there were two mobil television stations that had pulled up in the front yard. Rita held interviews with them while I met with citizens from another site in Ohio who had heard about it and wanted to talk about their site. I went across the street and talked with them.

Mr. **Levitas.** Did you ever express your concerns, if you had any, about this type of operation?

Mr. **Hedeman.** No, I did not.

Mr. **Levitas.** Now, Mr. Lucero, could you contribute? Are you through, Mr. Hedeman? Was there anything else you wanted to say?

Mr. **Hedeman.** Well, there were a number of other of those types of incidents.

Mr. **Levitas.** California?

Mr. **Hedeman.** California, on one occasion Rita indicated that she wanted—or that the President expressed a desire to visit a hazardous waste site somewhere in the West. The only one that appeared visitable—if there is such a word—was the Stringfellow site. I made that recommendation to her but he never visited. I don't know anything more about that.

On another occasion she indicated that he may want to visit a site into New Jersey while present for the campaign of Millicent Fenwick.

On a third occasion when I——

Mr. **Levitas.** Is that the Homestake site?

Mr. **Hedeman.** It may have been, I don't know. I would have to check that for you.

Mr. **Levitas.** If you could supply that for the record.

[The information follows:]

In response to a question to William Hedeman, Director, Office of Emergency and Remedial Response (OERR): That office (OERR) did not supply a list of sites for the President to visit to help with the election of Congresswoman Millicent Fenwick; the visit was discussed, but no further information was ever provided.

Mr. **Hedeman.** On a third occasion when I was up on the Hill with her meeting with a Congressman and I cannot recall and will not be able frankly to recall which Congressman it was or when the meeting was, I just recall coming out and the Vice President was calling her from Air Force One, he was flying to New Jersey, he was asking the question what is a Bunnt Fly Bog? We had to provide what little information I had on that site to him for briefing before he landed.

There were several sites in New Jersey in Congressman Rodino's district that were announced by the Administrator, roughly three, with the Governor and the commissioner. These were the first sites that we were actually moving on in New Jersey and the Governor requested the Administrator to come up and make that announcement.

Mr. LEVITAS. That would have been back early in 1982?

Mr. HEDEMAN. I think that was sometime in June.

Mr. LEVITAS. About the time we were having a hearing on this matter in New York City, as I recall.

Mr. HEDEMAN. I may be able to give you the date on that. I would have to ask to be able to correct the record if I am incorrect here but my records indicate it would be September 3, 1982.

Mr. LEVITAS. If your subsequent examination discloses another time or date, feel free to supplement that.

[The information received from Mr. Hedeman follows:]

In response to a question to Mr. Hedeman: On July 7, 1982, Mr. Hedeman traveled to New Jersey with Ann Gorsuch, not Rita Lavelle, for announcements with Governor Kean on two New Jersey sites, Kin-Buc and Lone Pine.

Mr. LEVITAS. Mr. Lucero?

Mr. LUCERO. Like Mr. Hedeman, perhaps with a little more timing I did attend the announcement of the Chem-Dyne settlement which was held in Hamilton, OH, the city where the site is located. At that time the announcement of the settlement was made by the Congressman from the district who I personally don't recall who it was. But in addition a lot of the other agency officials were there and that was just a normal announcement because that had been worked out with a lot of effort, it had been worked out and was finally ready to be announced.

There was in the case of the Seymour site, there was a desire on Rita's part that if it could be completed in advance of the election date that she would like to arrange for the announcement by either Senator Lugar or Governor Orr.

I will come back to that point, but on that one, like Mr. Hedeman, she was looking for a site where the President could visit to give some support to the program to raise its visibility and the administration's connection with it. And she asked about Seymour and I initially said the timing on the neogtiations if it is successful may allow that.

As it turned out it didn't. The President's schedule was preordained and it just couldn't be met.

In the case of the announcement on the timing, as it occurred, the Seymour settlement did come to conclusion I think on October 26. I may have to correct that but it is right around there.

But I can specifically remember going to Ms. Lavelle about the middle of October and telling her that I did not believe that we were anywhere near possible resolution and that I could guarantee timing so planning could be done for it.

These things couldn't just be created, they had to be planned a little, you had to have the people there. As it turned out it did happen.

I remember that because I also—her reaction was if you cannot get it you cannot get it, we will not worry about it.

I also remember telling Mr. Ramsey and Mr. Brown who the three of us were, sort of the final—we were the people the negotiating team came back to and I remember telling them that we were not under that particular pressure.

There is something else I wanted to say but I draw a blank. It slipped my mind.

Mr. LEVITAS. You said you wanted to get back to something related to the Governor and Senator Lugar.

Mr. LUCERO. Oh. The one thing I should tell you and I think it is true and Rita repeated it a number of times and I think I repeated it a number of times what she told us, he wanted something to happen at Seymour, one of the problems I had was I felt generally exhausted from Chem-Dyne trying to put that deal together and she wanted to start Seymour right away—she started Seymour before Chem-Dyne was finished. And it was very difficult to apply that much effort but notwithstanding, it became a—in my opinion it became a legitimate confluence of concern.

She wanted to get something done. There were a lot of other players that had to be mobilized to get anything done, the Department of Justice, the Office of Legal and Enforcement Counsel, and the region and all its parts. It became a way for a lot of people to come together because the Seymour site had been sitting there for 2 years and I recall making statements during at least one meeting where I said we need to do this in order that this can help to be available to be announced, something to that effect.

Mr. LEVITAS. Let me be frank with you because I think you are entitled to have the opportunity to address this, it has been said, there are suggestions that you as you indicated had made reference to the political implications of making some of these announcements. Your testimony just now about moving it forward so something could be done to be helpful, was that with reference to a political consideration?

Mr. LUCERO. No, sir, not primarily. It was primarily because it was an important site to deal with.

Mr. LEVITAS. With respect to the statement I just made about people have said, and I don't buy or use rumor or allegation but it is being said and therefore you ought to be able to refute that, that Gene Lucero was one of the people at OSWER who was talking about political considerations in terms of timing of announcements and location of announcements.

Now, do you——

Mr. LUCERO. I said earlier and I stick by it, I did on occasion say those things. Again, I would like to emphasize a couple points, one, there were no direct communications to me that that was the purpose; and second, there was a general discussion, I think if you went to almost anybody with OSWER you would find that that was the attitude that everything was happening on that basis. On occasion I succumbed to that attitude and made those statements.

Finally in this particular case as at Seymour, I want to emphasize two things, one, it was a way to mobilize activity and Mr. Biros and I talked about this coming back from the meeting that I recall, he said we finally have a chance to get something to happen on Seymour which was important to us.

Then as I want to reemphasize, in the middle of September there was no assurance that it was going to happen at all, and I just wanted Rita to understand that the timing could not be assured and I didn't want to be under any commitments.

Mr. LEVITAS. OK.

Well, I am going to—I have taken this time because I didn't want to break this up into segments. I am going to ask Mr. Molinari if he has any questions at this point but I am going to come back to the Seymour site with some very specific questions because I believe that the Seymour site and the whole situation may be very critical to this entire oversight investigation.

Perhaps even involving matters that you may not even be privy to, I don't know.

But I want to get into that a little bit today. Since it is another line of questions I think I will at this point—one last thing. Did anybody from the White House ever get involved in any way with the activities of either your offices by phone call, memorandum, conversation?

Mr. Hedeman?

Mr. **Hedeman**. On occasion I did get calls from the White House to advise them of sites that were primarily in the national news media, yes.

Mr. **Levitas**. Sorry?

Mr. **Hedeman**. That were in the national news that day or——

Mr. **Levitas**. What was the nature of the call, what is this site about?

Mr. **Hedeman**. What is this thing here, I just read about it in the paper, what is the background for it; never anything in terms of "We want you to do such and such," or "Things should go in a certain direction."

Mr. **Levitas**. Mr. Lucero?

Mr. **Lucero**. The only call that I ever received was in the same nature, please tell us what is going on at the site, sort of a national information. The only reason I got it was Ms. Lavelle or Mr. Hedeman were not in and one of the secretaries sent it to me.

Mr. **Levitas**. Thank you.

Mr. Molinari.

Mr. **Molinari**. Who called you from the White House to ask about this information, Mr. Hedeman?

Mr. **Hedeman**. The only individual I can recall is Marty Smith.

Mr. **Molinari**. Listening to the last round of testimony I get the impression that Ms. Lavelle spent quite a bit of time at press conferences. Do you have any idea how frequent these press conferences were held by her announcing action on dumpsites?

Mr. **Hedeman**. We could provide for the record each time one was held. They were fairly frequent. I can be generally responsive to your question but I cannot tell you how often.

Mr. **Molinari**. Fairly frequent though you would say?

Mr. **Hedeman**. Yes, that is correct.

Mr. **Molinari**. Do you have any idea of what kind of PR staff she had, including speech writers? Obviously somebody must have been preparing her for these press conferences? Do you have any idea how many people were on the payroll working for her in the press conference area?

Mr. **Hedeman**. Yes, she had a number of people who were in the public relations area. Two individuals that I personally can recall getting into this with her are Earl Voss and Gene Ingold, and in addition Sue Baldaga who was more of a coordinator of the press conferences and things of that sort, and liaison with whoever happened to be interested in the site.

Mr. MOLINARI. All right.

Mr. HEDEMAN. There are other people on her immediate staff who are involved in that type of thing but more on the support basis as opposed to——

Mr. MOLINARI. To give technical background necessary for press briefings?

Mr. HEDEMAN. Yes, graphic arts and draft press releases and things of that sort.

Mr. Ingold was her primary speech writer as I understand it anyway. Every package we sent up to her was then sent to Mr. Voss who seemed to be heading the little unit within the office that did all of that.

Mr. MOLINARI. It becomes fairly obvious that she had a rather large group of people whose function was primarily to prepare for press conferences and press releases.

Mr. HEDEMAN. Yes, I think that is correct.

Mr. MOLINARI. Let me ask you something. I am a little interested in what you said about Mr. Ingold being primarily a speech writer. If he was primarily a speech writer how do you account for the fact that he was the individual responsible for authoring that so-called infamous memo?

Mr. HEDEMAN. I am sorry, I don't know.

Mr. MOLINARI. Mr. Lucero, do you have any idea?

Mr. LUCERO. No, sir, although I would just observe that it was difficult for much of Rita's staff to appreciate some of the intricacies of the case—factual details—cases that Mr. Hedeman was working on.

Mr. HEDEMAN. I would confirm that, that once the drafts had been prepared they were sent back for accuracy and had to be revised and there were occasions where after they were revised they got revised back because they sounded too bureaucratic and we went through some of that.

Mr. MOLINARI. On the question of political sensitivities or pressures I have one or two questions the Berlin & Farrow site.

First of all, Mr. Hedeman, Mr. Steihl, do you know that name?

Mr. HEDEMAN. There is a Fred Steihl in the enforcement area.

Mr. MOLINARI. Sorry?

Mr. HEDEMAN. There is a gentleman named Fred Steihl, S-t-e-i-h-l is how he spells his name, I think, who——

Mr. MOLINARI. And what are his duties?

Mr. HEDEMAN. An enforcement attorney working in the Office of Legal and Enforcement Counsel, the OLEC function.

Mr. MOLINARI. I have some information indicating that on that site there were political pressures brought to bear for a settlement. Do either of you have any information on that?

Mr. HEDEMAN. I can only—using your line of questioning—we awarded a certain sum of money—I am sorry, I don't have the money available, or the amount available with me—for an emergency action at the Berlin & Farrow site. My memory tells me that that was sometime back in April.

Rita and I asked, she asked me to fly out to Michigan with her to make the announcement there. It was made with the Lieutenant

Governor of the State. I am sorry I don't even remember the gentleman's name.

That is the last I had, really had any direct involvement in Berlin & Farrow.

Mr. MOLINARI. I am just going to read two phrases to both of you, and ask you if you recognize them at all.

"The State can't wait politically to delay initial remedial actions. Declared emergency by State, State action has political pressures."

Mr. Hedeman, can you tell me what that means to you?

Mr. HEDEMAN. The site has been there for some period of time and it is considered to be a very, very serious situation. Information that became available to me at that site several weeks ago that as they had begun to do the emergency work at the site they have discovered the existence of a terribly large quantity of acid and a fairly large quantity of cyanide in direct proximity to each other. and that was something we didn't expect to find, frankly, as we began to excavate.

When whatever acid is there plus the cyanide interact, which could conceivably happen through a removal, the cyanide gas would emerge and would cause an immediate and very serious problem to that vicinity.

I think that is somewhat indicative of the problems at the Berlin & Farrow site, and I was not aware personally of the problems in the State of Michigan with respect to pressures on that site. But it became apparent to me in that press conference that there was intense public interest in the site.

Mr. MOLINARI. If I understand what you are saying, the political pressures were not pressures from any one individual or individuals, but rather a local demand that something be done?

Mr. HEDEMAN. That is correct.

Mr. LUCERO. Mr. Molinari, if I might add, since you asked me the question, the point I wished to make was that frequently the discussions used the term political but what they really meant was concern about the community reaction around. I have a vague sense of that. I was not aware, as Mr. Hedeman, that there was any elected official or others interested in it, but there was a lot of concern on the region's part to do something. They felt they were obligated to maintain their relations with the State Environmental Agency to do something, and to the extent we in headquarters were getting in the way, they were maw-mawing us, or whatever the appropriate term is, to make sure people keep that in perspective.

That term did get used all the time. I guess we would call that a small "p."

Mr. MOLINARI. I think that is very important. Myself, when I read some of the documents, I begin to suspect that perhaps there was undue influence being used, but certainly in some cases it was more a response to a condition that had been there too long.

I would like to try to get an idea as to what assurances there are in the case of a federally funded cleanup project that the cleanup doesn't result in a new site, or that materials taken from one site wind up becoming another dump site someplace else?

You know we have seen that happen too frequently at the local level. There have been abuses to hell and back. I think Chairman

Levitas, when he first came to my district and, that is what started our subcommittee investigation, saw firsthand evidence that that very thing was occurring. Illegally dumped toxic chemicals were taken from one site and brought someplace else; and lo and behold, we had another site on our hands.

What protections do you have in place that when the cleanup starts that the chemicals are properly disposed of?

Mr. HEDEMAN. About a month ago I signed a directive to the regional offices to the effect that no remedy would be—for offsite disposal—would be acceptable unless and until the offsite disposal was licensed and approved under the Resource Conservation and Recovery Act.

Up until that time we were essentially doing that on a case-by-case basis. But I felt given the fact that that was an issue that had been raised to me several times that I should make it clear in policy and signed a directive to that effect.

Mr. LUCERO. Mr. Molinari, I might add that Congress in its wisdom, if I recall right, put that specific requirement in the law that it go to a RCRA-permitted facility if it was offsite disposal.

Mr. MOLINARI. If it was in the law, I would like to go back to Mr. Hedeman and ask why did you see fit to make this point a month ago?

Mr. HEDEMAN. I was just being asked too often as a question, and given the fact that the people who are working for me, or in the regions, are not apt to read the law, I felt that it required reemphasis.

Mr. MOLINARI. Well, I think that was a wise thing to do, and I compliment you for doing that.

Let me ask you this: Was there any evidence that material was taken to sites that are not in conformance with the RCRA law?

Mr. HEDEMAN. I have no such evidence; no, sir. I might add that as the decision documents came up for signature the exact requirement was within the decision document, and then is embodied in the contract bids, the—I won't say the—the bid specifications that go out to the contractors who are bidding on these projects.

Mr. MOLINARI. Let us talk about what monitoring takes place, assuming that the dump site to which you take it is a proper one. What actual monitoring takes place?

Mr. HEDEMAN. There is an onscene coordinator from EPA who is——

Mr. MOLINARI. Onsite?

Mr. HEDEMAN. Onsite, and in addition the Army Corps of Engineers is managing the sites that we are responsible for cleaning up through their mechanism and its—I am advised and I sincerely hope, monitored very closely to assure that wastes do go to the approved licensed disposal facility.

Mr. MOLINARI. Do you have any idea of how many sites have been approved throughout the continental United States?

Mr. HEDEMAN. I am sorry. I do not. Of course, with the new land disposal regulations under RCRA coming into effect, I believe January 28 this year, the availability of licensed land disposal facilities we believe is going to become not as frequent as it was in the past, because of the much more stringent requirements required of those regulations.

Mr. MOLINARI. We have had a lot of discussion about litigation as opposed to negotiated settlements. Can you tell me if there came a time recently where orders were passed from headquarters requiring, in effect, a quota from each region of matters to be litigated?

Mr. HEDEMAN. I defer to you. Sorry.

Mr. LUCERO. Mr. Perry had sent a memo to those people in the regional counsel's office who worked for them, and had indicated that he intended to allocate next year's resources on the basis of performance and the primary measure of performance would be cases referred to headquarters for referral to the Department of Justice.

Mr. MOLINARI. If a particular region didn't refer matters for litigation, then I would assume that the allocation of resources the following year would be substantially less?

Mr. LUCERO. That is correct.

Mr. MOLINARI. For that region?

Mr. LUCERO. Yes.

Mr. MOLINARI. Mr. Chairman, I think you ought to hear this. What we are hearing now, Mr. Chairman, is that Mr. Perry had indicated to the various regional offices that depending upon the number of matters referred to headquarters here in Washington for litigation that that would be a determining factor on what they would receive in the following year by way of resources.

Do either of you gentlemen have any idea of what reaction there was in terms of referrals from the various regional offices in response to Mr. Perry's memorandum?

Mr. HEDEMAN. I do not, sir.

Mr. LUCERO. I do. There were a lot of referrals.

Mr. MOLINARI. As could be expected.

Mr. LUCERO. Yes. It did get their attention.

I think there was tension. Going back to a question Mr. Levitas asked earlier about places where there were problems, one of the problems that I think we resolved with Mr. Perry but initially his memo only dealt with case referrals. We were very concerned from our program perspective that adequate attention be given to develop all good enforcement options, not just case referrals.

We wanted—because of Congress' concern and the Administrator's concern—we wanted to make sure some of those cases that were appropriate for an administrative order be given that consideration so that we could issue the order and begin to look at the possible treble damages and civil penalty liability. So there was some tension, but I think we resolved that.

Mr. MOLINARI. Let us get back to numbers. Can you tell me what sort of numbers followed from Mr. Perry's mandate, Mr. Lucero?

Mr. LUCERO. I think I can. I don't receive these routinely and I may have to correct the record, but counting from my information, which is not necessarily complete, I think Mr. Perry got 28 referrals in 1982. That is not all the active cases, but those were the referrals. That was from my numbers a doubling over the year's previous effort, and that is the best of my information right now.

Mr. MOLINARI. You have no indication of what might have been sent in the early part of this year?

Mr. Lucero. To date, and I don't have his numbers, he is the official recordkeeper, there have been seven referrals for the first quarter.

Mr. Molinari. Do you know whether there were any difficulties in some of the regions in coming up with referrals?

Mr. Lucero. There were some difficulties; yes.

Mr. Molinari. Would you mind expanding upon that answer for us?

Mr. Lucero. No problem. Let me explain. In some cases of hazardous wastesites enforcement, development is difficult. And if I could take a moment to give you a sense of why. To get a good case developed you need information on the responsible parties, you need to be able to link them to the site, which means you need to know the contamination; you have to know the information that attaches them to the site, either shipping data, invoices, whatever, and that has to be analyzed. Then you need to have a sense of what remedy you want from them, what is the solution to your problem.

A lot of that takes time to develop. When Mr. Perry made his statements on the resource allocations not all cases were completely ready, and so some cases came in which were what I call partial 106 cases. By that, I mean the analysis to figure out what the solution ought to be had not been completed. So the idea would be to file a case to force the parties to do the study to find out what ought to be done.

Another kind of case that would come in is that work would have been done at a Superfund site up to, say, through the remedial investigation feasibility study, and Mr. Hedeman's staff might be ready to consider design. What they would do is initiate a cost recovery for that first component of the work of the site. There has been a lot of discussion about that response, and as a matter of policy we, I think Justice, OLEC and my office, have agreed that those are not cases we want to focus on in the future. The reason being is that they are resource intensive and they are not the big solution.

We can wait until the end of Mr. Hedeman's staff's work when we know that the costs may be 6 million as opposed to what is just $200,000, it is a better use of resources.

We have also made a decision that it is worth our while to invest the resources up front to get that information on the feasibility study and on the extent of contamination, because we are better able to prosecute our cases, and so we want to make our cases more in that framework than in what I described to you earlier.

Mr. Molinari. That is a very thorough answer. I appreciate it.

Let me ask you. I get the impression that in some of the regions they were not preparing these cases for enforcement or for litigation in a manner that was set forth in the criteria here in headquarters.

Would you care to comment on that, Mr. Lucero?

Mr. Lucero. Well, there were cases that either Mr.—I need to describe the structure of the process so you have an appreciation of that.

A case would be developed, given to the Regional Administrator. The Regional Administrator would then have the decision to refer it or do something else. If whatever the Regional Administrator agreed, it would be referred to headquarters. It would be split, one copy would go to Mr. Kurent's office, one copy would be going to my office. My technical people would review it for technical sufficiency that the claims of contamination and risk to the environment and to the public health were supportable and justifiable. Mr. Kurent's people would look at it for an additional legal review. If we both agreed, they would be referred to the Department of Justice.

There were cases that were kicked back because either legally or technically they were not sufficient.

Mr. MOLINARI. Were there instances where the quality of the preparation work was so poor that perhaps changes should take place in some of the regions?

Mr. LUCERO. I don't——

Mr. MOLINARI. I won't ask you to identify persons. I am just trying to find out as a policy matter what was happening.

Mr. LUCERO. I can't speak for the legal side. I don't know which cases they kicked back for those reasons. On the technical side I can only think of one or two cases and I—that is all I can think of right now.

Mr. MOLINARI. When a regional office negotiates a settlement I assume that they normally would have to get approval from several layers here in Washington before the final settlement could be formally agreed to between the parties?

Mr. LUCERO. Yes, sir.

Mr. MOLINARI. Were there any cases where the regions seemed to exceed their authority in that respect, and had virtually concluded negotiations without getting the green light from Washington?

Mr. LUCERO. In some cases, couple cases, yes.

Mr. MOLINARI. Could you tell us what cases they were?

Mr. LUCERO. They were cases where over a period of a year or two the regional people had been meeting to arrange—the ones I can recall—were to arrange a study in cooperation with the responsible parties and our problem with some of the parties developed was we had not had advance knowledge of the parameters they were building into their settlement, and I think I have worked out that difficulty with the particular region I am thinking of. But they did it on at least two occasions where we did not believe that the settlement parameters were adequate, and it was a surprise to us when we were confronted with the information.

Mr. MOLINARI. I hope steps have been taken with the people responsible to be sure there would not be repetition of that kind of thing.

Mr. LUCERO. I think with regard to the regions I would like to say this on their behalf. That one of the difficulties of course when I came in—not "of course," but when I came to the program these relationships with the regions were disjointed. With some reasons they were good, some bad. I think that we have, at least I have—feel I have, and I don't know about Mr. Hedeman but with division directors who were responsible for the technical part of enforcement of Superfund. They have a good relationship, very supportive. I try to support them, and I don't think we have this problem to speak of anymore.

Mr. MOLINARI. I am happy to hear that.

I have one last series of questions with respect to the hiring of the contractor to clean up. Is that always done on a competitive basis?

**Mr. HEDEMAN.** It is. I personally feel very strongly about that and have had the support of not only Miss Lavelle but the Administrator that contracts should be awarded on a competitive basis. We have found in every instance that has been bought to my attention that the low bidder has been significantly below the Government estimate. In other words, the——

**Mr. MOLINARI.** That would seem to indicate the Government estimates are habitually too high.

**Mr. HEDEMAN.** Right.

**Mr. LUCERO.** That has been our experience on the enforcement side as well, yes, sir.

**Mr. HEDEMAN.** That has not been an easy task. And when we award cooperative agreements to States there have been several instances in which sites have been delayed while States have dug in their heels and told us that they want to go with a sole-source negotiated contract. And despite the pressure, we have never yuielded on that, and I guess I personally feel very strongly we should never yield.

**Mr. MOLINARI.** So, to your knowledge the sole-source award has never occurred?

**Mr. HEDEMAN.** That is correct. There was a situation that has been reported in the press in the last several days, erroneously, involving Bluff Road in South Carolina, which was a site in which the responsible party agreed to clean up a fraction of the site.

I think for purposes of description, about 75 percent of it. Then the fund would come in and cover the remaining 25 percent. The State of South Carolina was rather vehemently of the opinion that we should keep the contractor on site, the one that did 75 percent of the work, rather than competitively bidding the Superfund portion.

There were fairly large numbers of delays at that site. We did not yield. The procurement went through two biddings because the first bidding the State used the wrong procedures. The second bidding occurred in the last two months and the State awarded a contract to the low bidder who does not happen to be the contractor who was on site for the responsible party portion of the cleanup.

**Mr. MOLINARI.** Is that TRI?

**Mr. HEDEMAN.** That is correct.

**Mr. MOLINARI.** They have not received the——

**Mr. HEDEMAN.** The bid went to the Defender Corp.

**Mr. MOLINARI.** I didn't get that.

**Mr. HEDEMAN.** The bid went to the Defender Corp., and I am sorry I don't know anything about them other than the fact they are a local concern in South Carolina.

**Mr. MOLINARI.** You say Defender Corp. Are you talking about a responsible party.

**Mr. HEDEMAN.** No, that is their name.

**Mr. MOLINARI.** OK.

**Mr. HEDEMAN.** Defender Corp.

**Mr. MOLINARI.** That is their corporate name.

**Mr. HEDEMAN.** Yes.

**Mr. Molinari.** Am I correct in that at that particular site EPA itself was partially responsible for some of the waste and had to contribute toward the settlement?

**Mr. Hedeman.** You are correct. Mr. Lucero can respond.

**Mr. Lucero.** That is correct, sir. In fact, EPA has paid a part of that money into the total pot that was used to help clean up the responsible party's section of the site.

**Mr. Molinari.** OK.

**Mr. Hedeman.** I would observe that at a number of these sites with multiple responsible parties, we are finding that one or more Federal agencies is a responsible party and it is primarily the Defense Department. Indeed, in some it is not only the Defense Department but the Air Force, the Army, and the Navy.

**Mr. Molinari.** You are anticipating my line of questioning.

**Mr. Hedeman.** I am sorry.

**Mr. Molinari.** No, I am glad you did. Let me just conclude with that one site before we get into the other Federal agencies. I can understand how some of the others might have gotten involved, but it is shocking when you hear that EPA, the very agency vested with the responsibility of cleaning up, turns out to be a party defendant. What happened there?

**Mr. Hedeman.** I think that is indicative of a problem that many are experiencing, and that is that wastes were collected under contract by a contractor and taken to a site with the assumption that it was being taken to a correct site.

**Mr. Lucero.** The waste involved there, sir, was a research facility—I am not sure exactly which one, but in the neighborhood, one of the neighboring States. It was normal waste generated in the laboratory procedures, and whatever they were generating had been collected and they arranged to dispose of it. That is not unlike other problems that we have seen around the country, not involving EPA necessarily but laboratories and States, State agencies with that waste problem, arranging to dispose of it and discovering down the road that where it went has become a hazardous waste problem.

**Mr. Molinari.** Let's turn our attention to what you were talking about, Mr. Hedeman. I would like to get an idea of the amount of toxic waste contamination caused by Federal agencies such as the Department of Defense and some of the others.

I am told that the U.S. Government is one of the major polluters in the country and that they have in many cases directly or indirectly contributed large quantities of toxic chemicals which wound up in illegal dumps.

Could you help us out by telling us what you know about this?

**Mr. Hedeman.** I believe, and I really would urge you to discuss this with the Department of Defense because I am not directly privy to their information—but I believe that they are working with roughly 700 sites on Defense Department installations that present hazardous waste problems.

The law prohibits us from spending money under the Superfund to correct Federal facilities, and we have maintained that position.

We have a variety of different fact situations. The easiest one is where the site is actually on a Federal facility ahd confined to that facility.

The second one is where the site is on the Federal facility but has migrated off the facility, and oftentimes there is a question as to whether the contamination problem we have discovered is being caused by the Federal facility or some other source or sources.

A third one is Federal facilities that have had hazardous wastes on them but were declared excess property by the Defense Department and sold, and there are some sites on the priority list that we are dealing with there.

A fourth one is where a Federal facility is a victim of midnight dumping. For example, the PCB's sprayed along the 240 miles of roads in North Carolina also got sprayed on I think it is Fort Bragg.

Mr. **Levitas**. That midnight dumping problem also exists with the Department of the Interior in the vast lands it holds in the West, particularly Indian reservations. That is a unique situation that I am not sure the law has examined that closely. Indeed, we are in a quandary as to how to deal with Indian reservations. Does that help?

Mr. **Molinari**. Yes; it helps immensely. Thank you.

Taking the third category you listed, where you have a Federal facility that was excessed, surplused and now becomes part of the 419 priority site list. What contribution do you get from the Federal Government? Do you treat them the same as you would a corporate body who has caused toxic chemicals to be dumped on the site?

Mr. **Hedeman**. Yes; we do, in the Department of Defense context; we are working toward a final agreement with them in which they will agree to take over all responsibility for past owned facilities that are considered to be hazardous waste sites.

Mr. **Molinari**. You mean they will have total control over what to do with it and where to put it?

Mr. **Hedeman**. That is correct.

Mr. **Molinari**. And you have no oversight whatever?

Mr. **Hedeman**. We will provide the technical oversight and advice and recommendations to them in this agreement, but they would treat this as a Federal facility under the law.

Mr. **Molinari**. I am just going to make an observation at this point and I am far from expert on the matter. When we see the problems with EPA and the difficulties in enforcing existing law, I wonder whether we have the expertise, whether we will be able to do the job, and whether EPA is going to maintain monitoring duties over these particular Federal sites?

Mr. **Hedeman**. I can assure you we will maintain the monitoring duty. At least with respect to the Department of Defense I believe they have a great deal of expertise in this area, much of which I am drawing on in the Superfund Program. They have begun to deal with problems at Federal facility sites and essentially taken on remedies that we are trying to incorporate in some of the remedies we are dealing with. They are similar in problems and in some cases they are a little out ahead of us on some of these solutions.

Mr. **Molinari**. Did you want to add something to that, Mr. Lucero?

Mr. **Lucero**. I was just going to mention from the enforcement side that some of the sites we are involved in, involving the Defense Department that we have been successful. I can't give you a percentage. I have a sense of maybe half the time to date getting the Defense Department responsible parties to participate in the cleanup work. I just wanted to mention that so you would be aware of it.

Mr. MOLINARI. Well, all right.

I have other questions but I think we will defer to the future.

Mr. Chairman, I just would make the comment that I have found these two witnesses to be extremely helpful, certainly to this member. The testimony you have given us here today is very important and it is going to, I think, focus us in on the problems that we have been trying to address for too long. I appreciate your expertise and your candor. Thank you.

Mr. HEDEMAN. Thank you.

Mr. LUCERO. Thank you.

Mr. LEVITAS. Thank you very much, Mr. Molinari. I will try to wrap this up, if I can, but there are some extremely important questions particularly with the Seymour site which we are going to get into in much greater detail at a later time.

Mr. Lucero, do you know if any waste at Seymour came from any other waste site that is involved in the Superfund Program?

Mr. LUCERO. Do you mean one we are taking enforcement at or one which Mr. Hedeman is cleaning up?

Mr. LEVITAS. Either.

Mr. LUCERO. I don't have any information that any waste at the Seymour site came from a cleanup under the Superfund Program. I do know that——

Mr. LEVITAS. Go ahead.

Mr. LUCERO. I do know that some of the waste at the Seymour site was from the Chem-Dyne site, and because of the connection between the corporate entities that they exchanged wastes. We have enforcement cases at both of those sites.

Mr. LEVITAS. But if I understand you correctly, some of the wastes, toxic material at Seymour had originally been located at Chem-Dyne?

Mr. LUCERO. Right. This was before the enforcement case was started, as best I know.

Mr. LEVITAS. Do you know why they moved it from Chem-Dyne to Seymour?

Mr. LUCERO. No, sir, although the problems that arose at Chem-Dyne were that they were taking in more wastes than they could handle, and it was a recycler and a broker of wastes, and the responsible parties were going to other locations with it after collecting the money.

Mr. LEVITAS. That seems to be a particular pattern that Mr. Molinari made reference to, there seems to be a shuffling around of some of these wastes from one site to the other.

Mr. LUCERO. Yes, sir.

Mr. LEVITAS. Do you know if any of the companies responsible for Seymour have received money to clean up any other hazardous waste sites?

Mr. LUCERO. Can you read that question again, sir?

Mr. **Levitas**. Do you know whether any of the companies that are responsible parties at Seymour have received funds to clean up other hazardous waste sites?

Mr. **Lucero**. Funds from the Superfund?

Mr. **Levitas**. Superfund, States, as a result of settlement agreements, trust funds that might have been set up?

Mr. **Lucero**. In the Seymour situation there was one of the responsible parties, a small responsible party. It isn't Chemical Waste exactly, it was a subsidiary of, I think, of Chemical Waste. And the arrangement we made in the Seymour deal was we wanted a surface cleanup, an absolute protection that the surface cleanup would occur.

The responsible parties came forward and wanted to use Chemical Waste to do the work because they had an arrangement that was financially appealing to them, among other reasons. What we did in that situation was, we made, we required, we agreed with their arrangement but we required them to post a bond which guaranteed performance and was at the level that we expected the cleanup would necessitate as well as extraordinary environmental catastrophe insurance.

So, to the extent, the way you asked the question, the answer is the trust fund, which in that case was created by 24 of the settling companies, was given to Chemical Waste, which is the 25th company, which was a responsible party to do the work.

Mr. **Levitas**. Were there any other of these responsible parties at Seymour that in other sites had received money to do the cleanup at those other sites?

Mr. **Lucero**. Not that I know of. I would like to check the record and correct that, if I may.

Mr. **Levitas**. Would you do that, please.

[The information received follows:]

Responsible Parties at Seymour that received money for work at other Superfund Sites.

Attached is a list of those major facilities that were responsible parties at Seymour and were contracted to perform work at other sites. Dollar figures are being requested to accompany the attached material. There were other responsible parties at Seymour that we have not yet received like information on. We are, at this time, supplying information on those facilities that we believed were implicit in the request.

| | Contract No. | Effective date | Site | Amount |
|---|---|---|---|---|
| CECOS | 68-92-0006 | 8/14/81 | Oswego, NY | |
| OH Mat | 68-94-0001 | 9/15/81 | Valley of the Drums | |
| OH Mat | 68-94-0002 | 9/23/81 | Dreyfus Street | |
| CECOS | 68-94-0004 | 9/22/81 | Valley of the Drums | |
| Chem Waste | 68-94-0005 | 10/14/81 | Dreyfus Street | |
| Chem Waste | 68-94-0006 | 10/28/81 | Valley of the Drums | |
| SCA | 68-93-0010 | 1/4/82 | Brodhead Creek | |
| SCA | 68-94-0010 | 12/1/81 | Carolawn | |
| OH Mat | 68-93-0011 | 2/28/82 | Drake | [1] $764,513 |
| Chem Waste | 68-95-0111 | 3/12/82 | Midco | |
| CECOS | 68-95-0091 | 3/17/82 | Chem-Dyne | |
| CECOS | 68-94-0013 | 3/25/82 | Brickyard | |
| CECOS | 68-95-0074 | 4/21/82 | Isanti | |
| Chem Waste | 68-95-0031 | 5/7/82 | Hammond | |
| SCA | 68-93-0014 | 6/19/82 | Montgomery Bros | |
| Chem Waste | 68-93-0016 | 7/2/82 | Holder Chem | |

| | Contract No. | Effective date | Site | Amount |
|---|---|---|---|---|
| OH Mat | 68-94-0015 | 8/7/82 | Hillsborough | |
| BFI | 68-93-0018 | 8/21/82 | Poca, W. Va | |
| BFI | 68-93-0019 | 9/2/82 | Holder Chem | |
| Chem Waste | 68-99-0003 | 9/9/82 | Coppermine | |
| OH Mat | 68-94-0017 | 12/18/82 | Pembroke Pines | [2] 19,765 |
| OH Mat | 68-95-0005 | 12/6/82 | A&F | [1] 35,371 |
| BFI | 68-96-0064 | 2/4/83 | Motco | |
| Chem Waste | 68-94-0018 | 2/12/83 | Baldwin, Fla | |
| Planned removals: | | | | |
| CECOS | 68-01-6605 | 6/23/82 | Laskin/Poplar | [3] 1,095,508 |
| CECOS | 68-01-6598 | 8/23/82 | Keefe | [3] 400,000 |
| OH Mat | 68-01-6714 | 10/29/82 | Montgomery Bros | [3] 639,147 |
| OH Mat | 68-01-6742 | 3/2/83 | Harrison Co | [4] 500,000 |
| Chem Waste | 68-01-6611 | 8/12/82 | Triangle | [3] 88,463 |
| Chem Waste | 68-01-6627 | 10/12/82 | Lenoir, NC | [3] 92,587 |
| Chem Waste | 68-01-6550 | 2/10/82 | Midco | [3] 880,000 |

[1] Contract amount—may not be final cost.
[2] Final cost.
[3] Awarded contract amount—may not be final cost.
[4] Work in progress—amount is current estimate of cost to complete.

Mr. Levitas. You have answered part of the next question, but EPA had the option of making the final approval of the final method of cleanup at Seymour, I take it?

Mr. Lucero. Yes, sir.

Mr. Levitas. And did you review that?

Mr. Lucero. I did not personally review it. I relied on Mr. Frank Biros, who is my Deputy, to advise me on the technical aspects.

Mr. Levitas. How is the cleanup actually going to be done? The surface cleanup.

Mr. Lucero. How will it proceed?

Mr. Levitas. What is going to happen?

Mr. Lucero. It is already proceeding.

Mr. Levitas. What are they going to do?

Mr. Lucero. I'm coming to that. The process is the following, and this is a very generalized process, that Chemical Waste will, as the party that will manage the cleanup, is going in, they are emptying the bulk tanks, if the waste is recyclable they will do it that way, if it needs to be disposed of they will make arrangements to take it to one of their other licensed facilities.

The drums had already been cataloged, as best I can recall, but to the extent they were not they were to be cataloged, compatible wastes were to be identified, and the arrangement is you go in and empty the drums by using a tanker truck to take and dispose of that waste in much the same way as you do in bulk storage. The drums would then be crushed and they will be disposed of in an appropriate fashion.

Mr. Levitas. Is there going to be any incineration involved in the cleanup?

Mr. Lucero. There may be some. There was, the list of facilities that were identified as possible final repositories there was an incinerator identified. I would like to state that we were not trying to tell Chem Waste where to take it, the requirement we put on was that they identify the possible places and they all be subject to the necessary permits and licensing.

Mr. Levitas. Who at EPA will be monitoring this process?

Mr. LUCERO. There is an on-the-scene coordinator that is present at the site, as best I recall, as I know right now, two or three times a week, but they will be monitoring the process to be sure it is done in accordance with the technical conditions of the settlement.

Mr. LEVITAS. You will be able to supply us the names of those individuals?

Mr. LUCERO. Yes, sir.

[The information received follows:]

### ON-SCENE COORDINATORS AT SEYMOUR

*State Representative:* Jim Knoy, Indiana State Board of Health

*Engineering and Environment, Inc.:* Sue Ahrendt, Scott McCone, Jerry Kelly, Claude Mays, Lisa Perenchio, John Angelo, Dan Cozza, Dan Sewall, Scott Byram, Glenn Cekus, and Ken Krueger.

*Regional EPA Representative:* Beverly Kush.

Mr. LEVITAS. Also I would like, if you could, supply for our use the names of the persons who were involved in the negotiation of the settlement with those 24 companies, including representatives of the firms, their legal counsels, EPA representatives, State people, and so forth, because we are going to want to go back and interview many of them.

Mr. LUCERO. I have no problem with that, sir, and I will do it. Do you wish to have the people who actually participated in the negotiations? I think everybody had sort of a fallback person that they talked to, for example——

Mr. LEVITAS. As many names as you can give us, and we will sort them out.

[The information received follows:]

~~TAB II~~ Seymour Negotiators

Attached is a list of negotiators present at Settlement Meetings. This list may, however, not be totally inclusive until attempts to contact each individual listed is complete for their remembrance of people included in the settlement negotiations.

TAB A: NAMES, TITLES, ADDRESSES AND TELEPHONE NUMBERS OF PARTICIPANTS IN THE SEYMOUR NEGOTIATIONS

| NAME | TITLE | COMPANY AND ADDRESS | TELEPHONE # |
|---|---|---|---|
| EPA: | | | |
| *Dennis Devlin | Environmental Engineer | U.S. EPA, 401 M St., S.W., Wash. DC 20460 | 202-382-4838 |
| Nancy Willis | Environmental Engineer | | 202-382-2339 |
| Mike Kosakowski | Environmental Engineer | | 202-382-4814 |
| Kevin Garrahan | Environmental Engineer | | 202-382-4846 |
| Francis J. Biros | Chief, Compliance Branch | | 202-382-4810 |
| Mitch Burack | Attorney-Advisor | | 202-382-3091 |
| Gene Lucero | Director, Waste Programs Enforcement | | 202-382-4814 |
| EPA Region V: | | | |
| Beverly Kush | On Scene Coordinator | U.S.EPA, 230 S. Dearborn St., Chicago, ILL 60604 | 312-886-7572 |
| Greg Vanderlaar | Chief, Remedial Response Section, Indiana, Michigan and Ohio | | 312-886-6217 |
| Larry Kyte | Attorney | | 312-886-6833 |
| Pam Rekar | Attorney | | 312-886-6857 |
| IBM Corporation: | | | |
| Scott Richter | Environmental Engineer | 540 White Plains Rd. Tarrytown, NY 10591 | 914-997-3917 |
| Tom Morris | Environmental Engineer | | 914-997-3763 |
| *Andra S. Weissberg | Co-op Student | | 914-997-3936 |
| Robert B. Morris, Jr. | Director, Environmental Programs | | 914-997-3918 |
| Arthur Reagin | Attorney | | 914-997-3000 |
| DuPont: | | | |
| Jim Stallings | Environmental Coord. | Polymer Product Dept. DuPont, 100 W 10th St. Wilmington, DL 19898 | 302-774-5098 |
| *Edwin L. Crow | Environmental Mgr. | DuPont, 1007 Market St. Wilmington, DL 19898 | 302-774-1824 |
| *Steve Tasher | Attorney, Environmental Division | " | 302-774-8352<br>(202-289-8660) |
| GM: | | | |
| Dr. Joseph P. Chu | Manager, Industrial Waste & Toxic Substances | Planned Environment Environmental Activities Staff Bldg., GM Tech Center, Warran MI 48090 | 313-575-8602 |
| Len Charla | Attorney, GM Legal Staff | 3004 W. Grand Boulevard Detroit, Michigan 48202 | |

*Have left company. Steve Tasher is currently with Bayh, Tabbert and Capehart.

TAB A (Page 2)

| NAME | TITLE | COMPANY AND ADDRESS | TELEPHONE # |
|---|---|---|---|
| Indiana State Board of Health: | | | |
| Jim Hunt | Chief, Generators and Transporters Section | 1330 W. Michigan St.<br>P.O. Box 1964<br>Indianapolis, ID 46306 | 317-633-0762 |
| Jim Knoy | Solid Waste Mgmt. Planner II | | 317-633-0208 |
| Chemical Waste Mgt.: | | | |
| Mike McKinney | Manager of Operations | 3003 Butterfield Rd.<br>Oakbrook, ILL 60521 | 312-844-8600 |
| Ray Bock | Marketing Manager | | 312-654-8800 |
| Department of Justice: | | | |
| Stephen Ramsey | Chief, Environmental Enforcement Section | 10th and Pennsylvania Ave., N.W, Wash DC 20530 | 202-633-5271 |
| John Hammock | Attorney | | 202-633-5227 |
| Paul Schaefer | Attorney | | 202-633-4150 |
| U.S. Attorney's Office: | | | |
| Charlie Goodloe | U.S. Attorney | 46 E Ohio St.<br>Indianapolis, ID 46306 | 317-331-6333 |
| Covington & Burling: | | | |
| Allan Topol | Partner | 1201 Pennsylvania Ave<br>P.O. Box 7566, Wash DC 20044 | 202-662-5402 |
| Hammond, Cromer Jackson and Borgman: | | | |
| John Cromer | Attorney | 431 E Hannah Avenue<br>Indianapolis ID 46227 | |
| Western Electric: | | | |
| Morton Zeidman | Attorney | 222 Broadway<br>New York, New York 10038 | 212-669-2510 |
| Cummins Engine Company: | | | |
| Jose Uranhga | Attorney | Box 3005, Mail Code 92510, Columbus, ID 47201 | |
| Bayh, Tabbert and Capehart: | | | |
| Birch Bayh | | 1575 Eye St., N.W.<br>Suite 1025, Wash DC 20005 | 202-289-8660 |

Mr. **Levitas**. Now, did Mr. Perry, was he the person who actually made the decision to settle the Seymour case, or was someone else the actual decisionmaker? Who made the final call on that?

Mr. **Lucero**. There were three parties, sir.

Mr. **Levitas**. Ms. Lavelle indicated she got overruled on that matter.

Mr. **Lucero**. I am afraid I must state for the record that Ms. Lavelle's impressions of this case were wrong, and I would like to point out that I watched as much as possible last night, before I just ran out of time, the last hearing that you held with Ms. Lavelle there, and I must say for the record that everytime she used the word Seymour she meant Chem-Dyne.

There is just no way to explain her statements. They are just inconsistent with the facts.

Mr. **Levitas**. Why were the 170-odd additional corporations that were included in the second round of negotiated settlements released from any further liability for groundwater cleanup?

Mr. **Lucero**. At Seymour?

Mr. **Levitas**. Why were they released from any liability?

Mr. **Lucero**. The arrangement was we had a dual negotiating strategy, we had two sets of negotiations going on.

We had negotiations with two groups, one with all of the group and one with the smaller group.

The 341 generators, the large group, if they all settled, would have paid totally the full cost of the Government's estimate of the cleanup, and it was our full intent at the beginning and at the end that we would give all parties the options to participate in that second settlement track if they so desired and that was a condition that they could have a full release at that time.

Partly that was the result of the fact that, in addition, the negotiation with the smaller group, the 24-plus-1, that became—the full release became one of the items clearly we could not go forward on.

If you look at the two sets of agreements, you will notice there is a symmetry. If I recall, they are almost identical; there may be language changes, but we tried to maintain the same provisions so that both parties, regardless of which track they were in, would have that option.

It was always available if the 24-plus-1 settlement failed then all those 24-plus-1 companies could go to the second track.

That was a commitment we made to them.

Mr. **Levitas**. Counsel makes a point, does that mean the decision to give the release of all liability was made ahead of time before you got into this process?

Mr. **Lucero**. No, sir, it was negotiated.

Mr. **Levitas**. As I understand it, you estimate it will cost $30 million to cleanup the Seymour site and EPA thus far collected about 11 million and you may have to sue some of the others for the rest and that could take a long time.

Where is the money going to come from in the meantime since Superfund can't be used since the State doesn't have the money to clean up the site and what is going to happen if cleaning up the ground water costs more than $15 million as is now estimated?

Mr. **Lucero**. Several things.

First, there is additional—you have referred to it as $11.7 million if I recall right, or maybe $1.2 million; I can't recall right offhand.

About $3.5 million is right now available to do the next stage of work regardless of whether the State can utilize Superfund or not. It is just available. We have not called it in because we need to set up an escrow account, but it is available.

In addition, the time for people to take advantage of this agreement is over and we are taking the position of the 140 companies that remain if the costs for the ground water is greater than we have estimated, and then I will tell you for the record that we went to extraordinary lengths in my opinion to protect, I would say inflate the factors, to put in protections. We told them that that was the only way we would go with that full everyone can participate settlement.

They had to accept that number.

I would note that we therefore have available on a joint-several theory, and we intend to file a lawsuit against approximately 40 of the remaining companies, many of whom are Fortune 500 companies, for the full cleanup.

Now, to some of those companies' credit, they have come in and begun to say to the Department of Justice attorneys on the case, "We would like to take over responsibility for ground water cleanup regardless of costs."

I will tell you why that is. Just like there is apparently an opinion out there that suggests that the cleanup of Seymour may be greater than the $30 million we talked about, there is an equal opinion out there, and it is one that I am more inclined to personally, that it is a lot less than 30 million and in fact there may be a real advantage to have held out because the cleanup of the ground water may not occur. Be that as it may, the point I need to emphasize is that we always expected, and indeed it turned out that there are responsible parties who can bear the full cost of the cleanup on a joint and several liability.

They are available to be sued and we are developing that suit now.

Mr. LEVITAS. Do either of you know whether Deputy Administrator Dr. John Hernandez has ever been involved in any of the Superfund site cases? Has he ever asked for briefings, sat in on meetings?

Mr. LUCERO. Yes, sir.

Mr. LEVITAS. Both? Briefings and meetings?

Mr. LUCERO. He has asked for briefings.

Mr. LEVITAS. Has he sat in on meetings with respect to the sites?

Mr. LUCERO. He has not set in on any to my knowledge, on any decision meetings, and I would say that both for the time I was Mr. Hedeman's deputy and the time I was, or have been in the enforcement job.

Mr. LEVITAS. What sites has he asked for briefings on?

Mr. LUCERO. There is only one I recall and that was the—I may be wrong, but I think—wait.

The Nashua site.

Mr. LEVITAS. Nashua what?

Mr. LUCERO. Yes. In New Hampshire.

Mr. LEVITAS. Thank you. Do either of you know or have knowledge whether Assistant Administrator for Water, Mr. Eric Eidsness, has ever been involved in any of the Superfund site cases along the same lines as I asked about Dr. Hernandez?

Mr. LUCERO. I can only think of—I don't have any specific knowledge of this; however, the *Olin-Triana* case, which is a listed site on which there was a major settlement here recently was initially and has been managed as a water enforcement case.

Therefore, it would have been under his jurisdiction.

Mr. LEVITAS. Did he ask for briefings on any other sites?

Mr. LUCERO. I don't have any information on that.

Mr. LEVITAS. Mr. Hedeman?

Mr. HEDEMAN. No, sir.

Mr. LEVITAS. Is anyone in Mr. Eidsness' office involved in any way with either of your offices for coordinating the work on enforcement efforts concerning any site?

If so, who is that person?

Mr. LUCERO. I don't know that I have a single contact, although I know both the Director and the Deputy Director of the Water Enforcement Office. We don't routinely meet, however, where we have cases with water claims and with hazardous waste claims we do coordinate usually at the staff level.

Mr. HEDEMAN. I would add to that that I draw on the hydrology expertise out of the Office of Drinking Water which is under his jurisdiction.

Mr. LEVITAS. Mr. Molinari asked you about the Bluff Road, SC, site and your answer was very interesting. It is somewhat different from more information we have received recently and I would like you to explain it.

As I understand, you said that the Superfund Program paid for a portion of that settlement, and that EPA and the Department of Justice allowed responsible parties to settle for a portion of the cost and the fund is picking up the difference. It was my understanding—if that is correct, it was my understanding that there is still some controversy going on or questions being raised certainly at the Department of Justice as to whether or not the Superfund can pick up a remaining balance of a cost of a site where you have gotten settlements by responsible parties and, in addition to that, the question I would raise is, if you have got responsible parties and there is joint and several liability, why would the Superfund pick up that remaining amount?

Mr. LUCERO. What I would like to first put in perspective is that there is no legal prohibition so far as I have been advised to Superfund picking up a component of the full cleanup. The issue that we have discussed in the tripartite group I referred to of Justice, OLEC and OWPE, the question has been raised whether as a matter of policy we ought to do that.

That is really to some extent the Assistant Administrator's call and Mr. Hedeman's call as to whether he wants to participate. I would note that there is no problem with Superfund picking up a component and then our going out and suing on a cost recovery for the Superfund expenditures.

That is what we are doing at Bluff Road, by the way.

The only policy issue is whether or not we want to negotiate with that as a possibility because, once you establish that as a possibility, it is very, very likely you will never be able to get 100 percent negotiated settlements. Somebody will always hold out.

Mr. LEVITAS. OK. I know that both of you gentlemen work long and hard hours and so it would not be unusual for you to be working late at the office.

On Friday, February 4, Mr. Lucero, you left EPA, according to the records we looked at, at 9:05 p.m., which was a Friday night. Mr. Hedeman, you left the Agency that night at 10:10 p.m.

Just for frame of reference that was the date on which Ms. Lavelle was asked for her resignation by Mrs. Gorsuch.

Was there anything in your being there on that particular night at 9:05 and 10:10 that was unusual, out of the ordinary, different from just your normal industriousness?

Mr. HEDEMAN. Yes. I found that night one that I don't think I shall forget for some time because Ms. Lavelle did come down from the Administrator's office extremely upset and called a meeting of myself, Mr. Lucero, and Dr. Skinner, and advised us at that meeting that she had been asked to resign and the suddenness of it was extremely upsetting.

We met with her for approximately 1 hour and she was, I think, devastated would be an understatement.

I have never in my entire life encountered that situation and I found it personally upsetting, very, very upsetting, because of the entire atmosphere.

We then met with Mike Brown, who was designated as the new Acting Assistant Administrator, and spoke with him for approximately half an hour and then returned to my office, and I think Gene and I then sat and simply discussed it amongst ourselves for a fairly lengthy period of time.

I honestly don't recall leaving that late at night, but——

Mr. LUCERO. It was that late.

Mr. HEDEMAN. I can't tell you that I did anything else.

Mr. LEVITAS. Mr. Lucero.

Mr. LUCERO. Basically the same thing. A large part of my staff, who frequently is there anyway—not quite that late, but late—once the word had circulated that that is what had happened, people were waiting around to see what could be said, what the results were, what the reactions were, and I think we were all personally affected and distressed.

Mr. LEVITAS. Where did you meet with Mr. Brown?

Mr. LUCERO. In the conference room adjacent to Ms. Lavelle's office.

Mr. LEVITAS. And it was after that meeting that you went back to your respective offices before you left or went to other meetings?

Mr. LUCERO. We also spent, I recall spending maybe an hour sitting in Mr. Hedeman's office where we just talked about it.

Mr. LEVITAS. I don't have any other questions.

Mr. MOLINARI. No questions, Mr. Chairman. Thank you.

Mr. LEVITAS. Prior to Mr. Brown being designated as Acting Assistant Administrator, did he have access to the locked files in your office, Mr. Lucero?

Mr. LUCERO. He would have had to request access. It is unlikely, I would just observe, that he would have, since he had access to the Office of Legal and Enforcement Counsel and, as I testified before, they have nearly a duplicate set of what we have.

Mr. LEVITAS. Well, first of all I want to thank both of you for your testimony today. It was not intended, but you broke your last record of four and a half hours, Mr. Lucero. Your testimony has not only been extremely informative about events and discussions and activities on many of the matters we have looked into from my point of view as chairman of the Investigations and Oversight Subcommittee. Your testiony has been extremely helpful in focusing on the needs of the program and what legislative response may or may not be needed in order to assist in making that program even more effective to carry out what Congress really wants to do in getting this job done.

Because both of you are key actors in the administration of this program, I don't have any doubt that as we analyze your testimony in preparing our report just on the programmatic side, that today has been an extremely important day and I think Congressman Roe of New Jersey made that point earlier in his comments and his remarks.

Beyond that, as I have indicated, you have shed a great deal of light on just what was happening.

As I indicated in my opening remarks, this is by no means in any way a wrapup of the entire discussion. I know, for example, we will get back much more deeply into the Seymour situation and into some other matters, but I must say that today your testimony has assisted this subcommittee greatly and I want to express my appreciation to both of you for your participation and your contribution.

Mr. Molinari?

Mr. MOLINARI. Thank you, Mr. Chairman.

I have the impression that you have dealt so much in depth with the gut part of the statute itself and, I would like to make the request of you both to submit any recommendations that you have for changing the law to make it more effective in dealing with this problem. I certainly would be most happy to receive them in writing so I can sit down with the rest of the members of the committee, Mr. Roe, and so on, and move to consider appropriate changes to the law.

I think you can help us do a better job and we can help you do a better job.

Thank you.

Mr. LEVITAS. I should have stopped earlier, but there was a question I wanted to ask you which you may or may not know the answer to.

In March of 1982 this subcommittee had two hearings on the matter of the Agency's suspension or repeal of the prohibition against dumping of liquid toxics into the landfills and on the second day of hearing in March we asked for a report back as to who dumped what, where, during the period in which the prohibition was released.

Mr. Deitrich testified at that time as to his examination disclosing I think some number of States where there were different facilities that in fact received these materials during that period of time.

One of them was identified as being in Colorado. Do you know whether that was in the Lowery site?

Mr. **Hedeman.** I do not know that.

Mr. **Lucero.** I was in Colorado at the time. I was still the Deputy Regional Administrator. I have no independent proof, but I was advised that that had happened at the Lowery site.

Mr. **Levitas.** At the Lowery site?

Mr. **Lucero.** Yes, sir.

Mr. **Levitas.** Is there any way, based on your experience at the regional office, if we can go back and find out when that dumping occurred and the quantity?

Mr. **Lucero.** I think that exists. I will check it for you if you like.

Mr. **Levitas.** Will you do that? That would be extremely informative.

Mr. **Lucero.** OK.

[The information received follows:]

### LOWRY LANDFILL

In response to the question concerning information on the dumping of liquids in the Lowery landfill, including what was dumped and when, we asked the Regional Office and their response is attached.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE MAR 12 1983

SUBJECT Burial of Hazardous Waste at the Denver-Arapahoe Chemical Waste Processing Facility

FROM 8AW-WM

TO Hamid Saebfar (WH-527)

We have compiled the information that you requested relating to the types of waste and number of drums buried at the Denver-Arapahoe Chemical Waste Processing Facility between February 25 and March 22, 1982. This information was obtained from Gary Holcomb, the chief chemist at the site, from the hazardous waste manifests.

Liquid waste in drums received between 11/20/81 and 2/22/82:

| Type of Waste | Number of Drums | Percentage of Total |
|---|---|---|
| Ignitable | 575 | 40% |
| Corrosive | 198 | 14% |
| Toxic | 202 | 14% |
| EP Toxic | 156 | 11% |
| Non-Hazardous | 303 | 21% |
| TOTAL: | 1434 | |
| TOTAL HAZARDOUS: | 1131 | |

Liquid waste in drums received between 2/23/82 and 3/23/82:

| Type of Waste | Number of Drums | Percentage of Total |
|---|---|---|
| Ignitable | 309 | 29% |
| Corrosive | 162 | 15% |
| Toxic | 228 | 22% |
| EP Toxic | 286 | 27% |
| Non-Hazardous | 72 | 7% |
| TOTAL: | 1057 | |
| TOTAL HAZARDOUS: | 975 | |

The total number of hazardous waste drums received during these times is 2106. All of these drums were buried during the period of 2/23/82 to 3/23/82.

If you need additional information, please don't hesitate to call me at FTS 327-6238.

Lou

Louis W. Johnson, Chief
Waste Management Branch

EPA Form 1320-6 (Rev. 3-76)

Mr. LEVITAS. Thank you very much.

If there is no further business to come before the subcommittee this afternoon, the subcommittee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 2:50 p.m., the subcommitted was adjourned subject to the call of the Chair.]

[The following was received for the record:]

JAMES J. HOWARD, N.J., CHAIRMAN

GLENN M. ANDERSON, CALIF.
ROBERT A. ROE, N.J.
JOHN B. BREAUX, LA.
NORMAN Y. MINETA, CALIF.
ELLIOTT H. LEVITAS, GA.
JAMES L. OBERSTAR, MINN.
HENRY J. NOWAK, N.Y.
ROBERT W. EDGAR, PA.
ROBERT A. YOUNG, MO.
NICK JOE RAHALL II, W. VA.
DOUGLAS APPLEGATE, OHIO
GERALDINE A. FERRARO, N.Y.
BRIAN J. DONNELLY, MASS.
DONALD JOSEPH ALBOSTA, MICH.
RON DE LUGO, VIRGIN ISLANDS
GUS SAVAGE, ILL.
FOFO I. F. SUNIA, AM. SAMOA
KATIE HALL, IND.
DOUGLAS H. BOSCO, CALIF.
JAMES F. McNULTY, JR., ARIZ.
JIM MOODY, WIS.
ROBERT A. BORSKI, PA.
JOE KOLTER, PA.
TIM VALENTINE, N.C.
EDOLPHUS TOWNS, N.Y.
WILLIAM O. LIPINSKI, ILL.
MICHAEL A. ANDREWS, TEX.
TOM T. VANDERGRIFF, TEX.
J. ROY ROWLAND, GA.
JAMES McCLURE CLARKE, N.C.
ROBERT E. WISE, JR., W. VA.

GENE SNYDER, KY.
JOHN PAUL HAMMERSCHMIDT, ARK.
BUD SHUSTER, PA.
ARLAN STANGELAND, MINN.
NEWT GINGRICH, GA.
WILLIAM F. CLINGER, JR., PA.
GUY MOLINARI, N.Y.
E. CLAY SHAW, JR., FLA.
BOB McEWEN, OHIO
FRANK WOLF, VA.
THOMAS E. PETRI, WIS.
HAL DAUB, NEBR.
LYNN MARTIN, ILL.
VIN WEBER, MINN.
ROBERT F. (BOB) SMITH, OREG.
DON SUNDQUIST, TENN.
NANCY L. JOHNSON, CONN.
RON PACKARD, CALIF.

SALVATORE J. D'AMICO, SPECIAL COUNSEL
AND STAFF DIRECTOR
RICHARD J. SULLIVAN, CHIEF COUNSEL
CLYDE E. WOODLE, CHIEF ENGINEER
MICHAEL J. TOOHEY, MINORITY
STAFF DIRECTOR

Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515
TELEPHONE: AREA CODE 202, 225-4472

B-376 Rayburn Building
Washington, D. C. 20515
May 9, 1983

Mr. Howard A. Tanner
Director
Department of Natural Resources
Steven T. Mason Building
Box 30028
Lansing, Michigan 48909

Dear Mr. Tanner:

I am writing to acknowledge receipt of and to thank you for your letter of March 28, 1983, concerning testimony before the Investigations and Oversight Subcommittee regarding toxic materials at the Berlin and Farro, Swartz Creek, Michigan, Superfund sites. I have provided a copy of that material to the Subcommittee's investigators so that they may review it and include your information in their analysis.

I also want you to know that, as you requested, your letter and the enclosed material will be made a part of the hearing record, a copy of which will be provided to you when that record is printed.

With best wishes, I am

Very truly yours,

Elliott H. Levitas

Elliott H. Levitas
Chairman
Subcommittee on
Investigations and Oversight

EHL/amg

STATE OF MICHIGAN

NATURAL RESOURCES COMMISSION
JACOB A. HOEFER
E. M. LAITALA
HILARY F. SNELL
PAUL H. WENDLER
HARRY H. WHITELEY

JAMES J. BLANCHARD, Governor
DEPARTMENT OF NATURAL RESOURCES
STEVENS T. MASON BUILDING
BOX 30028
LANSING, MI 48909
HOWARD A. TANNER, Director

March 28, 1983

Honorable James J. Howard, Chairman
Committee on Public Works and Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Howard:

Please note the attached correspondence to Subcommittee Chairman Levitas and to Congressman Molinari and the Michigan Congressional Delegation. Please note that I have requested Congressman Levitas to insert this material in an appropriate fashion into the Congressional Record. In order to emphasize this, I would make the same request of you.

Sincerely,

Howard A. Tanner

Howard A. Tanner
Director

Enc.

RECEIVED
MAR 3 1983
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

STATE OF MICHIGAN

JAMES J. BLANCHARD, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING
BOX 30028
LANSING, MI 48909
HOWARD A. TANNER, Director

NATURAL RESOURCES COMMISSION
JACOB A. HOEFER
E. M. LAITALA
HILARY F. SNELL
PAUL H. WENDLER
HARRY H. WHITELEY

March 28, 1983

Honorable Elliott H. Levitas, Chairman
Subcommittee on Oversight and Investigations
B 376 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Levitas:

Congressman Molinari of your Committee indicated in testimony that the Michigan Department of Natural Resources had conspired with Region V of the Environmental Protection Agency (EPA), Chicago, to deliberately mislead the Washington EPA Superfund administrators concerning toxic materials at the Berlin and Farro, Swartz Creek, Michigan, site.

With the attached material, which I have sent to the Michigan Congressional Delegation, I clarify how Congressman Molinari errs. Throughout the negotiations, contrary to his statements, the tanks in question were always below ground and were described repeatedly as being below ground, by ourselves, EPA in Chicago, and by internal memos of EPA Washington staff. Finally, in the documents prepared in regard to the Superfund grant of $1,030,000, the tanks were again described as being underground.

Congressman Molinari's allegations have created a substantial amount of unfavorable headlines and have served to demean the credibility of this agency. It is for this reason that I am very anxious to have them corrected. Would you please insert my letter and the attached material into the Congressional Record.

Thank you.

Sincerely,

Howard A. Tanner

Howard A. Tanner
Director

Enc.

cc: Congressman Dingell
Congressman Albosta

STATE OF MICHIGAN

JAMES J BLANCHARD, Governor

DEPARTMENT OF NATURAL RESOURCES
STEVENS T MASON BUILDING
BOX 30028
LANSING MI 48909
HOWARD A TANNER Director

NATURAL RESOURCES COMMISSION
JACOB A HOEFER
E. M LAITALA
HILARY F SNELL
PAUL H WENDLER
HARRY H WHITELEY

Ko. C 3/31/83

March 28, 1983

Honorable Elliott H. Levitas, Chairman
Subcommittee on Oversight and Investigations
B 376 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Levitas:

Congressman Molinari of your Committee indicated in testimony that the Michigan Department of Natural Resources had conspired with Region V of the Environmental Protection Agency (EPA), Chicago, to deliberately mislead the Washington EPA Superfund administrators concerning toxic materials at the Berlin and Farro, Swartz Creek, Michigan, site.

With the attached material, which I have sent to the Michigan Congressional Delegation, I clarify how Congressman Molinari errs. Throughout the negotiations, contrary to his statements, the tanks in question were always below ground and were described repeatedly as being below ground, by ourselves, EPA in Chicago, and by internal memos of EPA Washington staff. Finally, in the documents prepared in regard to the Superfund grant of $1,030,000, the tanks were again described as being underground.

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Thank you.

Sincerely,

Howard A. Tanner

Howard A. Tanner
Director

Enc.

cc: Congressman Dingell
Congressman Albosta

R1026

| TO | ROUTING | INITIAL |
|---|---|---|
| | Director | |
| | Assist. Dir. | |
| | Dep. Dir.-Mgmt. Ser. | |
| | Dep. Dir.-Env. Prot. | |
| | Dep. Dir.-Rec. & Enf. | |
| | Dep. Dir.-Resources | |
| | Exec. Assist.-NRC | |
| | Mgmt. Systems | |
| | Public Affairs | |
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| | Audit | |
| | Special Studies | |
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R1038 Rev. 1/81

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16
March 15, 1983

Honorable Guy Molinari
U.S. House of Representatives
501 Cannon House Office Building
Washington, D.C. 20510

Dear Representative Molinari:

Apparently allegations have been made that false information was submitted to the United States Environmental Protection Agency (U.S. EPA) regarding the Berlin & Farro site to the effect that the buried tanks found at the site were represented to be above-ground tanks. Our Department is extremely disturbed by these totally unfounded allegations which have resulted in considerable destructive press coverage. As you may know, the resolution of such hazardous waste sites is extremely complex. In order to accomplish this task, it is critical to maintain the trust of local residents and agencies. In CERCLA funded actions it is also very important to maintain open communications and credibility with the U.S. EPA. Headlines which appeared in our local papers such as "State is Accused of Lying" and "Did State Rig Data on Dump" can be devastating to efforts to maintain our credibility in the site cleanup process. These articles reported that you stated you had "hand written documents" which indicated that officials in EPA Region V and the Michigan Department of Natural Resources (MDNR) falsified applications "for funds to clean up the Berlin & Farro site." In addition, the article said that "the false information was that the potentially dangerous hazardous waste tanks at the site were above-ground when they were actually buried."

A review of our files on this site shows numerous documents originating from our Department, U.S. EPA Region V and U.S. EPA Headquarters which refer to the tanks as being underground. Attached are several examples of these documents which should make it obvious that these were represented as buried tanks by our Department and that both Region V and the Headquarters of U.S. EPA understood them to be buried tanks of waste. A chronology follows.

March 23, 1982 - Dr. Howard A. Tanner, Director of the MDNR submits a request to Valdas Adamkus, Region V, U.S. EPA, for CERCLA emergency funding to remove and dispose of hazardous wastes "recently discovered in four tanks buried at the Berlin & Farro Liquid Incineration facility". The 10-point document accompanying this request further describes discovery of the tanks during "excavation on the site" and were "estimated to have been in the ground for approximately 8 years".

April 26, 1982 - Transfer of the 10-point document referenced above in a request for a funding approval from Gregory VanderLaan, Chief, Remedial Response Section, U.S. EPA, Region V, to Hans Krump, Chief of the Response Operations Section.

June 2, 1982 - A meeting is held with MDNR and Region and Headquarters EPA staff in Washington, D.C. to brief Bill Hedeman, Chief of EPA's Office of Superfund. The briefing memo for that meeting states that "investigation by U.S. EPA and the State showed four buried liquid storage tanks" and references the "buried tanks" several times.

June 22, 1982 - Michigan submits an initial application for a cooperative agreement for the Berlin & Farro site.

July 7, 1982 - Letter is sent from Richard Bartelt, Region V, U.S. EPA to Andrew Hogarth, MDNR, commenting on the original cooperative agreement application submitted on June 22, 1982, suggesting that although "approval for removal of liquids from the four underground tanks and the tanks themselves was included in the immediate removal measures...that the state should consider including the removal of the tanks and liquids in the cooperative agreement application" instead.

July 14, 1982 - Michigan submits its revised cooperative agreement application to U.S. EPA including under Task 3 initial remedial measures, the removal and disposal of "four tanks containing an estimated 26,000 gallons of approximately 20% C-56 liquids and sludges (that) were discovered buried on the site".

July 30, 1982 - The cooperative agreement assistance award is transmitted from Frederick Meadows, EPA Headquarters to Gary Guenther, MDNR, including in the project title and description "Remedial Action to Remedy Underground Bulk Tanks".

August 5, 1982 - A letter is sent from Steve Ostrodka, Project Officer, Region V, U.S. EPA to Peter Ollila, MDNR On-Site Coordinator, requesting the "preparation of a feasibility study to evaluate alternatives for control of the buried tanks west of the lagoon area".

It should be clear from this chronology and the attached documents, that we were not attempting to obtain funds for the removal of these buried tanks by falsely representing them as above-ground tanks. It should also be clear that both Region V and Headquarters, U.S. EPA, fully understood that these were underground tanks.

I expect that this will put to rest any question regarding our attempt to obtain funding for the removal of these tanks at the Berlin & Farro site.

Sincerely,

Howard A. Tanner
Director

Enclosures

cKerbawy:clp
cc: Senator C. Levin
Senator D. Riegle, Jr.
Representative D. Albosta
Representative D. Bonior
Representative W. Broomfield
Representative B. Carr
Representative J. Conyers
Representative G. Crockett
Representative R. Davis
Representative J. Dingell
Representative W. Ford
Representative D. Hertel
Representative D. Kildee
Representative S. Levin
Representative C. Pursell
Representative H. Sawyer
Representative M. Siljander
Representative B. Traxler
Representative G. VanderJagt
Representative H. Wolpe

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING
BOX 30028
LANSING, MI 48909
HOWARD A. TANNER, Director

March 23, 1982

Mr. Valdas Adamkus, Regional Administrator
U.S. EPA - Region V
230 S. Dearborn
Chicago, Illinois 60604

Dear Mr. Adamkus:

Approximately 26,000 gallons of liquid hazardous waste, composed largely of hexachlorocyclopentadiene (C56) and hexachlorobenzene (C56) were recently discovered in four tanks buried at the Berlin and Farro Liquid Incineration facility in Genesee County, Michigan. Twenty to thirty perforated and leaking drums of liquid wastes were also uncovered on the site. Soils surrounding both the tanks and drums have been highly contaminated by leaks and spills from them. In order to eliminate this imminent threat to public health, welfare and the environment, removal and disposal of the hazardous liquid waste in the tanks and drums as well as the highly contaminated soils surrounding them is necessary.

The state does not currently have funds to address the needs presented at this site. For this reason, I am requesting $960,240 of CERCLA planned removal funds to remove and dispose of the hazardous liquid waste and surrounding highly contaminated soils at the Berlin and Farro facility. Attached is the report justifying this request.

Time is a critical factor in this removal effort as the effect of warmer weather on these chemicals severely limits site clean-up activities. Your expeditious response to this request would be greatly appreciated.

Sincerely,

Howard A. Tanner
Director

cc: S. Ostradka
G. Guenther
B. Courchaine
J. Bails
L. Holcomb
A. Hogarth
D. Dennis
T. Newell

### Fund Justification Report
### Berlin and Farro Liquid Incineration, Genesee County, Michigan

1. a. OSC's Name, Region and Telephone No.: Steve Ostrodka, Region V, (312) 886-7571.

1. b. State Contact: Andrew Hogarth, Chief, MDNR Groundwater Quality Section (517) 373-8147.

2. a. Name and Location of Site: Berlin and Farro Liquid Incineration, 8322 S. Morrish Road, Swartz Creek, Gaines Township, Genesee County, Michigan.

b. State Official Requesting Assistance: Howard A. Tanner, Director, Michigan Department of Natural Resources.

3. Nature of Incident: Berlin and Farro Liquid Incineration built a liquid industrial waste incinerator at this site during 1969-1970. They were granted a liquid industrial waste haulers permit in 1971. By 1974 the company had installed two million gallon storage lagoons and two licensed seepage lagoons directly west of the incinerator. In addition, the company had obtained a permit to operate a landfill for burial of empty 55 gallon drums approximately 300 yards west of the incinerator. In 1974, investigators determined that the incinerator, which had no emission controls, and the open lagoons presented a health hazard and the company was ordered to shut the incinerator down. Since that time, the State has pursued various avenues to accomplish clean-up of the site including conditions placed on a 1976 waste haulers license, a 1978 court order, license revocation in 1979 and 1980 and court appointment of a receiver to force compliance with the 1978 court order (after a 1980 finding of contempt of court). The company filed for bankruptcy in May of 1980; and in 1981 the property reverted to the state for delinquent taxes.

In May of 1981 the Governor declared a Toxic Substance Emergency at the Berlin and Farro site due to the "severe threat of gross damage to or deterioration of the health, safety or welfare of human, animal, or desirable plant life or of the environment". (See attachment.) Under that declaration, the total $850,000 contained in the State's Hazardous Waste Contingency Fund was directed toward clean-up activities at the site. That has allowed for removal and disposal of approximately 15,300 cubic yards of highly contaminated sludges from the lagoon area. Approximately 13,500 additional cubic yards of these sludges have been removed from the lagoon area and are being covered on site until additional funding can be found for ultimate disposal.

A magnetic survey of the site performed by Ecology and Environment, Inc. in January 1982 showed significant magnetic anomalies in the area around the incinerator. [redacted] holding a total of approximately 26,000 gallons of black liquid and sludges. Analysis of the liquid in the tanks showed high percentages of hexachlorocyclopentadiene (C56) and hexachlorobenzene (C66), among other priority pollutants. (See table 1 for results of sample analysis.) Soils surrounding these tanks show high levels of contamination, probably due to spillage of material during facility operation and tank leakage. Excavation also uncovered twenty to thirty 55 gallon drums of liquid material of a yet undetermined composition. The drums were perforated and leaking into surrounding soils.

Other magnetic anomalies are being investigated on the site, and a request has been made for magnetic survey of the remaining unsurveyed acerage of the site and portions of property connected to the site. Partial excavation of the landfill area has uncovered several drums containing liquid materials along with crushed barrels.

4. a. Why Action is Needed at this Time: The four storage tanks discovered at the Berlin and Farro facility contain an estimated 26,000 gallons of liquid hazardous waste. Analysis of the contents of the tanks produced the results shown on Table 1. These wastes are highly toxic. [redacted] for approximately 8 years and are of uncertain integrity. When discovered, of two tanks, one opening was simply covered with planks and the other with a metal plate, an indication that there was a lack of care in their security. This quantity of concentrated highly toxic liquids abandoned in a haphazard manner creates a threat to public health and welfare due to: direct contact and airborn vapors exposures; use of potentially polluted groundwaters; and through surface water and sediment contaminates potentially penetrating the food chain. (Approximately seventy homes within a mile of the site use private wells in drift or bedrock aquifers and surface waters at the site flow into a recreational fishery source.)

b. State Participation: As described previously, the state has pursued remedial action through every mechanism currently available to it. Administrative and legal actions have been taken to force clean-up by the responsible party. After that yeilded no significant remedy, the Governor declared a toxic substance emergency at the site and the state has since devoted approximately $850,000 towards site clean up. Most of this has been to remove and dispose of lagoon sludges. As more highly toxic waste has been discovered on site it is evident that additional funding is required to eliminate this environmental and public health threat.

5. Certification that the situation presents an imminent threat to public health and welfare: This site was declared a toxic substance emergency in May of 1981 due to the finding of the state's Toxic Substances Control Commission that: "the majority of these materials are toxic substances ... that they are in appropriate concentrations at the dump site alone and in combination to pose a severe threat of gross damage to or deterioration of the health, safety, or welfare of human, animal or desirable plant life on the environment."

6. How much money is needed to support response activities.

This clean-up effort addresses only the area where liquid waste was found near the incinerator and is divided into two major efforts.

1. Removal and disposal of the liquids, tanks and barrels - $420,240

a. Removal and disposal of liquids - $386,400
26,000 gallons in tanks
+1,600 gallons in barrels
27,600 gallons at $14/gallon for removal, transport, and disposal.

b. Removal and disposal of tanks - $33,840.
4 tanks x 47 cubic yards each = 188 cubic yards
188 cubic yards at $180/$\text{yd}^3$ for removal, transport and disposal.

2. Removal and disposal of contaminated soils around tanks and barrels - $540,000.
3000 cubic yards of soil
@$180/$\text{yd}^3$ for removal, transport and disposal

Total cost = $960,240.

7. Names of potential contractors:

A-1 Disposal - Plainwell Michigan - current contractor for lagoon sludge and soils removal.

Other which bid on current clean up efforts:

CECOS/CER Company - Williamsburg, Ohio
C. V. Rogers, Inc. - Flint, Michigan
Chemical Waste Management, Inc. - Riverdale, Illinois
Kettlewell Excavating, Inc., - Port Huron, Michigan
Inland Waters Pollution Control, Inc. - Ecorse, Michigan
O & H Materials, Inc. - Findlay, Ohio
SCA Chemical Services, Inc. - Lewiston, New York

8. Project Schedule and Funding Request: Removal and disposal should begin as soon as possible to avoid complications which occur as the weather warms. A project ceiling of $960,240 is requested.

9. No federal enforcement action has occurred to date. The Federal TAT performed a magnetic survey of the site. Previous to discovery of the buried tanks emergency CERCLA funds were used to help minimize sediment runoff from the site.

10. State Actions: As discussed above, the state has pursued administrative and court action to initate clean-up of this site and has committed $850,000 of state funds to initial clean-up action. There are no additional funds to utilize for removal of the concentrated liquid wastes and associated soils which have now been discovered at the site.

TABLE 1

Berlin & Farro Facility - Underground Tank Samples

Taken - 2/20/82 & 2/22/82

| Parameter | Tank | | | |
|---|---|---|---|---|
| | 1(east) (2/20/82) | 2(west) (2/20/82) | 3 (2/22/82) | 4 (2/22/82) |
| Organics | | | | |
| Benzene | 1.2 mg/kg | 3.6 mg/kg | .19 mg/kg | .02 mg/kg |
| Carbon Tetrachloride | .12 mg/kg | 25.0 mg/kg | .03 mg/kg | .016 mg/kg |
| Chloroform | .73 mg/kg | 3.2 mg/kg | .11 mg/kg | .08 mg/kg |
| Dichloroethane 1,1- | .21 mg/kg | ND | ND | ND |
| Dichloroethane 1,2- | .07 mg/kg | 1.4 mg/kg | ND | ND |
| Dichlorethene 1,1- | .08 mg/kg | ND | ND | ND |
| Ethylbenzene | 11 mg/kg | 2.7 mg/kg | .05 mg/kg | .81 mg/kg |
| Methylene Chloride | 1.1 mg/kg | 106 mg/kg | .36 mg/kg | .49 mg/kg |
| Tetrachloroethene | 5.4 mg/kg | 26 mg/kg | .065 mg/kg | .064 mg/kg |
| Toluene | 67 mg/kg | 19 mg/kg | .27 mg/kg | 65 mg/kg |
| Trans-1,2-Dichloroethylene | .095 mg/kg | ND | ND | ND |
| Trichloroethane 1,1,1- | 5.0 mg/kg | .06 mg/kg | .01 mg/kg | .026 mg/kg |
| Trichloroethene | 46 mg/kg | .33 mg/kg | .095 mg/kg | ND |
| Trichlorofluomethane | .16 mg/kg | ND | ND | ND |
| Dichloropropane | ND | .43 mg/kg | ND | ND |
| | | | | |
| benzo(A)anthracene | 220 mg/kg | 250 mg/kg | ND | ND |
| Hexachlorobenzene (C66) | 26,000 mg/kg | 7,200 mg/kg | 17,000 mg/kg | 13,000 mg/kg |
| Hexachlorocyclopentadiene(C56) | 120,000 mg/kg | 100,000 mg/kg | 20,000 mg/kg | 170,000 mg/kg |
| Hexachlorobutadienene (C46) | ND | 1,100 mg/kg | ND | ND |
| Hexachloroethane | ND | 200 mg/kg | ND | ND |
| Metals | | | | |
| Chromium | 78 mg/kg | 250 mg/kg | 20 mg/kg | 26 mg/kg |
| Copper | 130 mg/kg | 17 mg/kg | 1.5 mg/kg | 1.6 mg/kg |
| Lead | 9 mg/kg | 12 mg/kg | 2.9 mg/kg | 1.4 mg/kg |
| Nickel | 480 mg/kg | 1,200 mg/kg | 180 mg/kg | 120 mg/kg |
| Thallium | 6 mg/kg | 6 mg/kg | 7 mg/kg | <5 mg/kg |
| Zinc | 9.6 mg/kg | 36 mg/kg | 8.2 mg/kg | 2.5 mg/kg |
| Arsenic | ND(2.0)mg/kg | 4.4 mg/kg | ND | ND |
| Selenium | ND(2.0)mg/kg | 2.2 mg/kg | 3.2 mg/kg | 3.0 mg/kg |
| | | | | |
| Phenols | 2.0 mg/kg | 3.6 mg/kg | .26 mg/kg | 1.1 mg/kg |

NOTE: ND stands for non-detectable

CK:ma/3-11-82

TABLE 1

Berlin & Farro Facility - Underground Tank Samples

Taken - 2/20/82 & 2/22/82

| Parameter | Tank | | | |
|---|---|---|---|---|
| | 1(east)<br>(2/20/82) | 2(west)<br>(2/20/82) | 3<br>(2/22/82) | 4<br>(2/22/82) |
| Organics | | | | |
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| Carbon Tetrachloride | .12 mg/kg | 25.0 mg/kg | .03 mg/kg | .016 mg/kg |
| Chloroform | .73 mg/kg | 3.2 mg/kg | .11 mg/kg | .08 mg/kg |
| Dichloroethane 1,1- | .21 mg/kg | ND | ND | ND |
| Dichloroethane 1,2- | .07 mg/kg | 1.4 mg/kg | ND | ND |
| Dichlorethene 1,1- | .08 mg/kg | ND | ND | ND |
| Ethylbenzene | 11 mg/kg | 2.7 mg/kg | .05 mg/kg | .81 mg/kg |
| Methylene Chloride | 1.1 mg/kg | 106 mg/kg | .36 mg/kg | .49 mg/kg |
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| Toluene | 67 mg/kg | 19 mg/kg | .27 mg/kg | 65 mg/kg |
| Trans-1,2-Dichloroethylene | .095 mg/kg | ND | ND | ND |
| Trichloroethane 1,1,1- | 5.0 mg/kg | .06 mg/kg | .01 mg/kg | .026 mg/kg |
| Trichloroethene | 46 mg/kg | .33 mg/kg | .095 mg/kg | ND |
| Trichlorofluomethane | .16 mg/kg | ND | ND | ND |
| Dichloropropane | ND | .43 mg/kg | ND | ND |
| | | | | |
| Benzo(A)anthracene | 220 mg/kg | 250 mg/kg | ND | ND |
| Hexachlorobenzene (C66) | 26,000 mg/kg | 7,200 mg/kg | 17,000 mg/kg | 13,000 mg/kg |
| Hexachlorocyclopentadiene(C56) | 120,000 mg/kg | 100,000 mg/kg | 20,000 mg/kg | 170,000 mg/kg |
| Hexachlorobutadienene (C46) | ND | 1,100 mg/kg | ND | ND |
| Hexachloroethane | ND | 200 mg/kg | ND | ND |
| Metals | | | | |
| Chromium | 78 mg/kg | 250 mg/kg | 20 mg/kg | 26 mg/kg |
| Copper | 130 mg/kg | 17 mg/kg | 1.5 mg/kg | 1.6 mg/kg |
| Lead | 9 mg/kg | 12 mg/kg | 2.9 mg/kg | 1.4 mg/kg |
| Nickel | 480 mg/kg | 1,200 mg/kg | 180 mg/kg | 120 mg/kg |
| Thallium | 6 mg/kg | 6 mg/kg | 7 mg/kg | <5 mg/kg |
| Zinc | 9.6 mg/kg | 36 mg/kg | 8.2 mg/kg | 2.5 mg/kg |
| Arsenic | ND(2.0)mg/kg | 4.4 mg/kg | ND | ND |
| Selenium | ND(2.0)mg/kg | 2.2 mg/kg | 3.2 mg/kg | 3.0 mg/kg |
| | | | | |
| Phenols | 2.0 mg/kg | 3.6 mg/kg | .26 mg/kg | 1.1 mg/kg |

NOTE: ND stands for non-detectable

CK:mo/3-11-82

APR 26 [illegible]

Request for Funding Approval

Gregory A. Vanderlaan, Chief
Remedial Repponse Section I

Hans-Crump, Chief
Response Operations Section

We would appreciate an expeditious response to the attached request for funding to carry out an immediate removal at the Berlin and Farro Liquid Incineration facility in Swartz Creek, Michigan. The site is not listed on the Interim Priority List but has been nominated by the State of Michigan for inclusion on the Priority List of 400 sites. We are in close coordination with the Michigan Department of Natural Resources regarding the proposed action.

cc: A. Hogarth, MDNR

RECEIVED
APR 28 1982
Groundwater Qual., WQD

Fund Justification Report
Berlin and Farro Liquid Incineration, Genesee County, Michigan

1. a. OSC's Name, Region and Telephone No.: Steve Ostrodka, Region V, (312) 886-7571.

1. b. State Contact: Andrew Hogarth, Chief, MDNR Groundwater Quality Section (517) 373-8147.

2. a. Name and Location of Site: Berlin and Farro Liquid Incineration, 8322 S. Morrish Road, Swartz Creek, Gaines Township, Genesee County, Michigan.

   b. State Official Requesting Assistance: Howard A. Tanner, Director, Michigan Department of Natural Resources.

3. Nature of Incident: Berlin and Farro Liquid Incineration built a liquid industrial waste incinerator at this site during 1969-1970. They were granted a liquid industrial waste haulers permit in 1971. By 1974 the company had installed two, million gallon storage lagoons and two licensed seepage lagoons directly west of the incinerator. In addition, the company had obtained a permit to operate a landfill for burial of empty 55 gallon drums approximately 300 yards west of the incinerator. In 1974, investigators determined that the incinerator, which had no emission controls, and the open lagoons presented a health hazard and the company was ordered to shut the incinerator down. Since that time, the State has pursued various avenues to accomplish clean-up of the site including conditions placed on a 1976 waste haulers license, a 1978 court order, license revocation in 1979 and 1980 and court appointment of a receiver to force compliance with the 1978 court order (after a 1980 finding of contempt of court). The company filed for bankruptcy in May of 1980; and in 1981 the property reverted to the state for delinquent taxes.

   In May of 1981 the Governor declared a Toxic Substance Emergency at the Berlin and Farro site due to the "severe threat of gross damage to or deterioration of the health, safety or welfare of human, animal, or desirable plant life or of the environment". (See attachment.) Under that declaration, the total $850,000 contained in the State's Hazardous Waste Contingency Fund was directed toward clean-up activities at the site. That has allowed for removal and disposal of approximately 15,300 cubic yards of highly contaminated sludges from the lagoon area. Approximately 13,500 additional cubic yards of these sludges have been removed from the lagoon area and are being covered on site until additional funding can be found for ultimate disposal.

A magnetic survey of the site performed by Ecology and Environment, Inc. in January 1982 showed significant magnetic anomalies in the area around the [redacted] holding a total of approximately 26,000 gallons of black liquid and sludges. Analysis of the liquid in the tanks showed high percentages of hexachlorocyclopentadiene (C56) and hexachlorobenzene (C66), among other priority pollutants. (See table 1 for results of sample analysis.) Soils surrounding these tanks show high levels of contamination, probably due to spillage of material during facility operation and tank leakage. Excavation also uncovered twenty to thirty 55 gallon drums of liquid material of a yet undetermined composition. The drums were perforated and leaking into surrounding soils.

Other magnetic anomalies are being investigated on the site, and a request has been made for magnetic survey of the remaining unsurveyed acerage of the site and portions of property connected to the site. Partial excavation of the landfill area has uncovered several drums containing liquid materials along with crushed barrels.

4. a. Why Action is Needed at this Time: The four storage tanks discovered at the Berlin and Farro facility contain an estimated 26,000 gallons of liquid hazardous waste. Analysis of the contents of the tanks produced the results shown on Table 1. These wastes are highly toxic. The [redacted] for approximately 8 years and are of uncertain integrity. When discovered, of two tanks, one opening was simply covered with planks and the other with a metal plate, an indication that there was a lack of care in their security. This quantity of concentrated highly toxic liquids abandoned in a haphazard manner creates a threat to public health and welfare due to: direct contact and airborn vapors exposures; use of potentially polluted groundwaters; and through surface water and sediment contaminates potentially penetrating the food chain. (Approximately seventy homes within a mile of the site use private wells in drift or bedrock aquifers and surface waters at the site flow into a recreational fishery source.)

   b. State Participation: As described previously, the state has pursued remedial action through every mechanism currently available to it. Administrative and legal actions have been taken to force clean-up by the responsible party. After that yeilded no significant remedy, the Governor declared a toxic substance emergency at the site and the state has since devoted approximately $850,000 towards site clean up. Most of this has been to remove and dispose of lagoon sludges. As more highly toxic waste has been discovered on site it is evident that additional funding is required to eliminate this environmental and public health threat.

5. Certification that the situation presents an imminent threat to public health and welfare: This was declared a toxic substance emergency in May of 1981 due to the finding of the state's Toxic Substances Control Commission that: "the majority of these materials are toxic substances... that they are in appropriate concentrations at the dump site alone and in combination to pose a severe threat of gross damage to or deterioration of the health, safety, or welfare of human, animal or desirable plant life on the environment."

6. How much money is needed to support response activities?

   This cleanup effort addresses only the area near the incinerator where the liquid wastes were found.

   1. Removal and disposal of liquids: 26,000 gallons in tanks, 1,600 gallons in barrels (approximately 30 barrels); 27,600 gallons at $10/gallon for removal, transport and disposal

      $276,000

   2. Removal and disposal of tanks, barrels and highly contaminated soils.

      300 cubic yards at $180/cubic yards for removal, transport and disposal

      $54,000

      Total Cost: $330,000

7. Names of potential contractors:

   A-1 Disposal - Plainwell, Michigan
   - current contractor for MDNR for lagoon sludge and soils removal

   Inland Waters Pollution Control, Incorporated - Ecorse, Michigan

   Midwest Pollution Control - Mount Pleasant, Michigan

8. Project Schedule and Fundings Request: Removal and disposal should begin as soon as possible to avoid complications which occur as the weather warms due to the volatile nature of the waste. Activities at the site should take approximately 10 days.

   A project ceiling of $340,000 is requested. This includes $10,000 approved on October 5, 1981 to construct a berm to control runoff. An extension is requested of the 6 month limit on removal actions. This is considered necessary with the recent discovery of the tanks and drums to limit or mitigate an emergency and avoid an immediate risk to public health or welfare. No other assistance will be provided in a time basis.

9. No federal enforcement action has occured to date other than a verbal demand made in October, 1981 to prevent runoff from the site.

10. State Actions: As discussed above, the state has pursued administrative and court action to initiate cleanup of this site and has committed $850,000 of state funds to initial cleanup action. There are no additional funds to utilize for removal of the concentrated liquid wastes and associated soils which have now been discovered at the site.

Briefing memo distributed
at a briefing session for Bill Hedeman Chief
of Superfund USEPA in Washington D.C
6/3/82 1:45PM.
A [illegible]
P. O'[illegible] } in attendance
P.

Berlin and Farro
Swartz Creek, Michigan
May 18, 1982

Background:

o 1969 - Berlin and Farro Liquid Incineration Facility purchased and built a liquid waste incinerator.

o 1971 - Permit granted for waste hauling, incinerator operation, waste disposal in 4 lagoons onsite, and burial of empty drums. Wastes handled at Berlin and Farro include organochlorines and heavy metals.

o 1978 - State A.G. filed suit against Berlin and Farro and Hooker Chemical when State discovered hexachlorocylcopentadiene (C-56) and hexachlorobenzene (C-66) from Hooker had contaminated nearly the entire 40 acre site, two county drains, and Swartz Creek. Partial settlement reached with Berlin and Farro for remedial actions.

o 1980 - Berlin and Farro filed for bankruptcy, failed to comply with partial settlement, and found in contempt of court. Michigan Department of Public Health monitoring shows low-level C-66 in groundwater near site.

o 1981 - June - Odor complaints from nearby residents continue. Fish in Swartz Creek and the Flint River (approximately 10 stream miles from site) show detectable levels of C-56 in the flesh. Sediments from Slocum Drain, which drains the site, showed total organochlorines greater than 27,000 ppm. Delinquent taxes on property, reverts to state ownership. October - Heavy rainfall caused severely contaminated runoff to leave the site. Superfund was used ($10,000) to construct a secondary underflow dam and upgrade the downstream, existing underflow dam to prevent major discharges of C-56, C-66, and other highly toxic materials to surface waters.

o 1982 - February - A magnetic survey of the site by the EPA TAT showed significant magnetic anomalies in the area beyond the fenced lagoon area. April - Subsequent investigation by EPA and the State showed [redacted] containing 26,000 gallons of black liquid and sludges. Contents determined to be primarily C-56 and C-66 (complete tank analysis attached). Also found near the tanks were 30 drums. The contents of the drums were pumped out by the State and the empty drums were reburied.

Site Description:

o The 40 acre site near Flint, Michigan, consists of a badly deteriorated incinerator, 4 lagoons containing 11,000 cubic yards of contaminated sludges and as many as 10,000 buried drums. In addition to the lagoons and drums, there are four buried storage tanks containing 26,000 gallons of highly toxic materials.

o The tanks have been in the ground approximately 8 years and are of uncertain integrity. They contain highly toxic materials (C-56 and C-66). Presently a fence surrounds only the incinerator and lagoons.

o Visual observation of the southern edge of the site, where the majority of drums are buried, shows stressed vegetation and holes or small pits containing black liquids, possibly voids created by settling drums and filled by leaking drums and groundwater.

o Seventy homes within a mile of the site use private wells in drift or bedrock aquifers and surface waters flow into a recreational fishery.

o Three homes with children and one pregnant woman are adjacent to site, which allows easy access due to the lack of fencing.

Immediate Threat:

o Toxicity - Hexachlorocyclopentadiene (C-56), which is present throughout the site is a pale yellow liquid with a pungent, unpleasant odor. It is used as an intermediate in th manufacture of resins, dyes, fungicides, and pesticides, including kepone and mirex (C-56) is extremely toxic by ingestion, inhalation, and skin absorption. Short-term exposure can cause eye and skin irritation, loss of memory, nausea, as well as respiratory, liver and kidney ailments.

o Vapor Hazard - Recent air sampling done by the State indicated levels of C-56 in the range of 120 ppb (TLV for C-56 is 10 ppb). Sampling was performed 100 yards down wind of site with wind gusts up to 5 and 10 miles per hour at low temperatures. As the temperature rises, serious airborne vapor exposure problems will occur, due to the quantity of volatile liquids which have saturated soils in the tank area. Numerous private homes lie in the path of prevailing winds.

o Direct Contact - Because the site is easily accessible, there is the possibility that children may be exposed to C-56 and C-66 and the drums of unidentified materials by playing on the site. There is evidence that this has been occuring.

o Drinking Water - Contaminated soils and possibly the storage tanks present a severe threat to aquifers which are used for residential drinking water. Groundwater contamination by organics and C-66 has been confirmed.

Enforcement:

o Federal - Verbal demands were made in October 1981, when the first Superfund removal occurred. Demand letters for the current request are in preparation now.

o State - Since 1974 court actions by the States have failed to produce results. Company is presently bankrupt and in receivership.

State Role:

o The State has expended $850,000 on Berlin and Farro during the last six months, exhausting the State Hazardous Waste Contingency Fund. The funds were used to remove and dispose of 13,000 cubic yards of contaminated soil from the lagoon areas to reduce the vapor hazard. Approximately 11,000 cubic yards of contaminated sludges remain.

o As an interim measure, Michigan has committed to cover the remaining sludges (11,000 cubic yards) to reduce the escalating vapor hazard. The State has $10,000 remaining for this action.

o Although the site is not listed on the Interim Priority List, it is anticipated to qualify for the expanded list of 400, with a Mitre score exceeding 50.

Proposed:

Phase I

| | |
|---|---|
| o Installation of security fence - 8 foot chain link | $70,000 |
| o Removal and disposal of contaminated soil and empty drums from tank area and excavated drum area. | $60,000 |
| o Covering of contaminated sludges in lagoons (if State fails to do so) | $10,000 |
| o Tank Testing - Determine stability of four buried tanks (TAT) | - |
| | $140,000 |

Phase II:

| | |
|---|---|
| o Based on results of tank testing, removal and disposal of tanks and tank contents (26,000 gallons): | $280,000 |
| TOTAL REQUEST: | $420,000 |

Recommendation:

o Phase I should be implemented immediately with a project ceiling of $140,000 to minimize the escalating vapor hazard caused by contaminated soils. If the 4 storage tanks prove to be unstable, ERD will recommend approval of Phase II at that time.

o Since a three-day Superfund removal was performed in October 1981, an exemption to the six month time limit is required before Phase I begins. ERD recommends approval of the time exemption.

STATE OF MICHIGAN

NATURAL RESOURCES COMMISSION

E. M. LAITALA
HILARY F. SNELL
PAUL H. WENDLER
HARRY H. WHITELEY
JOAN L. WOLFE
CHARLES G. YOUNGLOVE

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING
BOX 30028
LANSING, MI 48909
HOWARD A. TANNER, Director

June 22, 1982

Mr. Valdas Adamkus
Regional Administrator
U.S. EPA - Region V
230 S. Dearborn
Chicago, Illinois 60604

Dear Mr. Adamkus:

Attached is an application for a cooperative agreement to use CERCLA funds to address the Berlin and Farro Liquid Incineration facility in Swartz Creek, Genesee County, Michigan. The site was declared a Toxic Substances Emergency by the Governor in May of 1980, and, although $850,000 of state funds have been expended in the partial removal of C56 contaminated sludges, the site remains an environmental and public health hazard. New information obtained within the last few months has substantially increased our concern regarding the environmental and health hazards posed by this site. Rating of the site using this new information in the MITRE model results in a score of 54.66 based on exposure via groundwater, surface water and air routes.

This application for a cooperative agreement covers the first of three phases to address the hazards existing at the site. It includes a remedial investigation to determine the full extent of contamination at the site; a feasibility study to evaluate alternatives for final remedial action; a community relations effort to ensure that those affected by the project understand, have input to, and reasonably support the decisions and actions which result from this effort; and several initial remedial actions which must be taken at the site now. These initial remedial actions include capping of lagoon sludges to minimize C56 volitilization during the warm weather months, excavation of the landfill areas for waste characterization, and removal and disposal of PCB contaminated liquid and solid wastes found in the landfill areas. All waste disposal will meet federal and state requirements for disposal of hazardous wastes. It is anticipated that fencing of the site, removal of leaking drums of liquids, and removal of C56 liquids from tanks on site will occur through emergency action by your agency prior to execution of this cooperative agreement. Phases two and three will be covered by an amendment to this agreement and will include final remedial actions and post-closure monitoring, operation and maintenance as necessary.

The state has appropriated sufficient funds to adequately match federal CERCLA dollars, and thus work can begin immediately on this effort upon execution of the cooperative agreement. Your expeditious review of this application would be greatly appreciated as the state believes that it is imperative to begin remedial work at the site in early July, 1982.

Sincerely,

Howard A. Tanner
Director

ACTING

STATE AND LOCAL NONCONSTRUCTION PROGRAMS

OMB Approval No. 80-R0190

## FEDERAL ASSISTANCE

1. TYPE OF ACTION (Mark appropriate box)
- ☐ PREAPPLICATION
- ☒ APPLICATION
- ☐ NOTIFICATION OF INTENT (Opt.)
- ☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION
a. NUMBER
b. DATE Year month day 19 82 7 14

3. STATE APPLICATION IDENTIFIER
a. NUMBER 38-6-000134
b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name : Michigan Dept.of Natural Resources
b. Organization Unit : Office of Budget & Federal Aid
c. Street/P.O. Box : P.O. Box 30028
d. City : Lansing
e. County : Ingham
f. State : MI
g. ZIP Code: 48909
h. Contact Person (Name & telephone No.) Robert Nowinski-Fiscal(517)373-1750
Peter Olilla-Tech.(517)373-2794

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog)
a. NUMBER P 96.510
b. TITLE CERCLA (Superfund)

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT
Berlin & Farro Liquid Incineration-remedial action involving a remedial investigation, feasibility study, citizen relation program and initial remedial action.

8. TYPE OF APPLICANT/RECIPIENT
A— State
B— Interstate
C— Substate District
D— County
E— City
F— School District
G— Special Purpose District
H— Community Action Agency
I— Higher Educational Institution
J— Indian Tribe
K— Other (Specify):
Enter appropriate letter A

9. TYPE OF ASSISTANCE
A— Basic Grant
B— Supplemental Grant
C— Loan
D— Insurance
E— Other
Enter appropriate letter(s) A E

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)
Swartz Creek, Genesee Co., Mich.

11. ESTIMATED NUMBER OF PERSONS BENEFITING 6000

12. TYPE OF APPLICATION
A— New
B— Renewal
C— Revision
D— Continuation
E— Augmentation
Enter appropriate letter A

13. PROPOSED FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ 995,143 | .00 |
| b. APPLICANT | | .00 |
| c. STATE | 110,572 | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. TOTAL | $ 1,105,715 | .00 |

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT SIXTH
b. PROJECT SEVENTH

15. TYPE OF CHANGE (For 12c or 12e)
A— Increase Dollars
B— Decrease Dollars
C— Increase Duration
D— Decrease Duration
E— Cancellation
F— Other (Specify):
Enter appropriate letter(s)

16. PROJECT START DATE Year month day 19 82 7 31

17. PROJECT DURATION 5 Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19 82 7 14

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)
U.S. EPA-Region V - Chicago, IL 60604

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

| | | No response | Response attached |
|---|---|---|---|
| (1) | State Office of Intergovernmental Relations | ☐ | ☐ |
| (2) | | ☐ | ☐ |
| (3) | | ☐ | ☐ |

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE Gary E. Guenther, P.E.
Deputy Director
b. SIGNATURE
c. DATE SIGNED Year month day 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. DEFERRED
- ☐ e. WITHDRAWN

32. FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ | .00 |
| b. APPLICANT | | .00 |
| c. STATE | | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. TOTAL | $ | .00 |

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.
b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

424-102

STANDARD FORM 424 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

EPA Form 5700-33 (Rev. 10-79)

**SECTION IV—REMARKS** *(Please reference the proper item number from Sections I, II or III, if applicable)*

STANDARD FORM 424 PAGE 2 (Rev. 4-77)

EPA Form 5700-33 (Rev. 10-79)

## GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

## APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item.

| *Item* | |
|---|---|
| 1 | Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. |
| 2a | Applicant's own control number, if desired. |
| 2b | Date Section I is prepared. |
| 3a | Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies *must* contain this identifier if the program is covered by Circular A-95 and required by applicable State areawide clearinghouse procedures. If in doubt, consult your clearinghouse. |
| 3b | Date applicant notified of clearinghouse identifier. |
| 4a-4h | Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. |
| 5 | Employer identification number of applicant as assigned by Internal Revenue Service. |
| 6a | Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. |
| 6b | Program title from Federal Catalog. Abbreviate if necessary. |
| 7 | Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. |
| 8 | Mostly self-explanatory. "City" includes town, township or other municipality. |
| 9 | Check the type(s) of assistance requested. The definitions of the terms are:<br>A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant.<br>B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).<br>C. Loan. Self explanatory.<br>D. Insurance. Self explanatory.<br>E. Other. Explain on remarks page. |
| 10 | Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 11 | Estimated number of persons directly benefiting from project. |
| 12 | Use appropriate code letter. Definitions are:<br>A. New. A submittal for the first time for a new project.<br>B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.<br>C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).<br>D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.<br>E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 13 | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 14a | Self explanatory. |
| 14b | The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 15 | Complete only for revisions (item 12c), or augmentations (item 12e). |
| 16 | Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| 17 | Estimated number of months to complete project after Federal funds are available. |
| 18 | Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b. |

| *Item* | |
|---|---|
| 19. | Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA" |
| 20 | Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP |
| 21 | Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached |

## APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

| *Item* | |
|---|---|
| 22b. | List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. |
| 23a. | Name and title of authorized representative of legal applicant. |
| 23b | Self explanatory |
| 23c | Self explanatory |
| *Note* | Applicant completes only Sections I and II. Section III is completed by Federal agencies |

## FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

| *Item* | |
|---|---|
| 24. | Executive department or independent agency having program administration responsibility |
| 25. | Self explanatory |
| 26 | Primary organizational unit below department level having direct program management responsibility |
| 27 | Office directly monitoring the program |
| 28 | Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice |
| 29 | Complete address of administering office shown in item 26. |
| 30 | Use to identify award actions where different from Federal application identifier in item 28. |
| 31. | Self explanatory. Use remarks section to amplify where appropriate |
| 32. | Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. |
| 33 | Date action was taken on this request |
| 34 | Date funds will become available |
| 35 | Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 36 | Date after which funds will no longer be available |
| 37 | Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks |
| 38. | For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—if same as person shown in item 35, write "same". If not applicable, write "NA" |

### *Federal Agency Procedures—special considerations*

A *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.

B *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.

C *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

*Form Approved*
*OMB No. 158-R0110*

PART II

PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request State, local, regional, or other priority rating?

_____ Yes __X__ No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?

_____ Yes __X__ No

Name of Agency or Board _____
*(Attach Documentation)*

Item 3.
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

__X__ Yes _____ No

*(Attach Comments)*

Item 4.
Does this assistance request require State, local, regional or other planning approval?

_____ Yes __X__ No

Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan?

_____ Yes __X__ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation?

_____ Yes __X__ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.
Will the assistance requested be on Federal land or installation?

_____ Yes __X__ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment?

__X__ Yes _____ No

See instructions for additional information to be provided.

Item 9.
Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm?

_____ Yes __X__ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticipated?

__X__ Yes _____ No

See instructions for additional information to be provided.

Item 11.
Is project in a Designated Flood Hazard Area?

_____ Yes __X__ No

EPA Form 5700-33 (Rev. 10-79)

Form Approved
OMB No. 158-R0110

## INSTRUCTIONS

### PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

**Item 1**—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

**Item 2**—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

**Item 3**—Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

**Item 4**—Furnish the name of the approving agency and the approval date.

**Item 5**—Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

**Item 6**—Show the population residing or working on the Federal installation who will benefit from this project.

**Item 7**—Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

**Item 8**—Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data are needed.

**Item 9**—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data are needed.

**Item 10**—Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed.

**Item 11**—Flood Insurance—Check "Yes" if project or any nonexpendable property is to be located in a special flood hazard area designated by the Department of Housing and Urban Development. If the answer is "Yes" the grantee must purchase the required flood insurance if required pursuant to Item 7 of the General Instructions to this application.

Form Approved
OMB No. 158-R0110

## PART III—BUDGET INFORMATION

### SECTION A—BUDGET SUMMARY

| GRANT PROGRAM, FUNCTION OR ACTIVITY (a) | FEDERAL CATALOG NO. (b) | ESTIMATED UNOBLIGATED FUNDS | | NEW OR REVISED BUDGET | | |
|---|---|---|---|---|---|---|
| | | FEDERAL (c) | NON-FEDERAL (d) | FEDERAL (e) | NON-FEDERAL (f) | TOTAL (g) |
| 1. | | $ | $ | $ 995,143 | $ 110,572 | $ 1,105,715 |
| 2. | | | | | | |
| 3 | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

### SECTION B—SCHEDULE A BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | TOTAL (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ 63,037 | $ | $ | $ | $ 63,037 |
| b. Fringe Benefits 21.73% | 13,698 | | | | 13,698 |
| c. Travel | 6,300 | | | | 6,300 |
| d. Equipment | - | | | | - |
| e. Supplies | 3,050 | | | | 3,050 |
| f. Contractual | 1,003,500 | | | | 1,003,500 |
| g. Construction | - | | | | - |
| h. Other | - | | | | - |
| i. Total Direct Charges | 1,089,585 | | | | 1,089,585 |
| j. Indirect Charges 21.02% | 16,130 | | | | 16,130 |
| k. TOTALS | $ 1,105,715 | $ | $ | $ | $ 1,105,715 |
| 7. Program Income | $ | $ | $ | $ | $ |

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### SECTION B – SCHEDULE B – BUDGET CATEGORIES

| 6. Program Elements | FUNDING | | | (4) MAN-YEARS |
|---|---|---|---|---|
| | (1) FEDERAL | (2) NON FEDERAL | (3) TOTAL | |
| a. Task 1 | $ 342,364 | $ 38,041 | $ 380,405 | .3 |
| b. Task 2 | 103,819 | 11,536 | 115,355 | .3 |
| c. Task 3 | 488,236 | 54,248 | 542,484 | .1 |
| d. Task 4 | 7,705 | 856 | 8,561 | .2 |
| e. Task 5 | 53,019 | 5,891 | 58,910 | 1.1 |
| f. | | | | |
| g. | | | | |
| h. | | | | |
| i. Total Program Elements | $ 995,143 | $ 110,572 | $ 1,105,715 | 2.0 |
| j. STATE TOTAL | $ 995,143 | $ 110,572 | $ 1,105,715 | 2.0 |

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*Form Approved*
*OMB No. 158-R0110*

### SECTION C–NON-FEDERAL RESOURCES

| (a) GRANT PROGRAM | (b) APPLICANT | (c) STATE | (d) OTHER SOURCES | (e) TOTALS |
|---|---|---|---|---|
| 8. Phase One | $ | $ 110,572 | $ | $ 110,572 |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS | $ | $ | $ | $ |

### SECTION D–FORECASTED CASH NEEDS

| | TOTAL FOR 1st YEAR | 1st QUARTER | 2nd QUARTER | 3rd QUARTER | 4th QUARTER |
|---|---|---|---|---|---|
| 13. Federal | $ 995,143 | $ 656,794 | $ 338,349 | $ | $ |
| 14. Non-Federal | 110,572 | 72,978 | 37,594 | | |
| 15. TOTALS | $ 1,105,715 | $ 729,772 | $ 375,943 | $ | $ |

### SECTION E–BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) GRANT PROGRAM | FUTURE FUNDING PERIODS (YEARS) | | | |
|---|---|---|---|---|
| | (b) FIRST | (c) SECOND | (d) THIRD | (e) FOURTH |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS | $ | $ | $ | $ |

### SECTION F–OTHER BUDGET INFORMATION

*(Attach Additional Sheets If Necessary)*

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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### PART IV–PROGRAM NARRATIVE *(Attach per instruction)*

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*OMB No. 158-R0110*

## INSTRUCTIONS

### PART III

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may not require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period *(usually a year)* and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b).**

For applications pertaining to a *single* Federal grant program *(Federal Domestic Assistance Catalog number)* and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to *multiple* programs where *none* of the programs *require* a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g).**

*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes to existing grants,* do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should *not* equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

**Section B. Schedule A—Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets were prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-h—Show the estimated amount for each direct cost budget *(object class)* category for each column with program, function or activity heading.

Line 6i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost. Refer to Office of Management and Budget Circular No. A-87.

Line 6k—Enter the total of amounts of Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

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## INSTRUCTIONS

### PART III
(Continued)

**Section B. Schedule B—Budget Categories**

**Lines 6a-h**—For each program element fill in the total requirements for funds *(Federal, non-Federal, and total)* and manyears.

**Line i**—Show the totals of Lines 6a through h in each column.

**Line j**—Show the State totals. Total *(Program Elements)* and State total might not be equal due to expenses which are not classified under specific program elements.

**Section C. Source of Non-Federal Resources**

**Lines 8-11**—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet. (See Attachment F, FMC 74-7.)

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also Attachment F, FMC 74-7.)

Column (c)—Enter the State contribution if the applicant is *not* a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

**Line 12**—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13**—Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14**—Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15**—Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19**—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuing grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods *(usually in years)*. This Section need not be completed for amendments, changes or supplements to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

**Line 20**—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21**—Use this space to explain amounts for individual direct object cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22**—Enter the type of indirect rate *(provisional, predetermined, final or fixed)* that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23**—Provide any other explanations required herein or any other comments deemed necessary.

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## PART V
## ASSURANCES

The Applicant hereby agrees and certifies that he will comply with the regulations, policies, guidelines, and requirements including OMB Circular No. A-95, A-102 and FMC 74-4, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant agrees and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or nation origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary source of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to employees of institutions of higher education, hospitals, other non-profit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the grantor agency and the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will comply with all applicable requirements of Section 13 of the Clean Water Act Amendments of 1972 (P.L. 92-500), if the grant is awarded under any grant authority of that Act, which provides that no person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity under the said Clean Water Act Amendments for which the applicant receives financial assistance and will take all necessary measures to effectuate this agreement.

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13. The State makes the following additional assurances attached as items 13a. through 13r. of this application and these are intended to be incorporated into any subsequent cooperative agreement.

13a. The State acknowledges that CERCLA Sections 104(c) and 104(d)(1) require that the State pay or assure payment of 10 percent of the costs of the remedial actions to be undertaken pursuant to this Cooperative Agreement. CERCLA Section 104(c)(3)(C) provides that EPA will grant the State a credit against the share of the costs for which it is responsible under this section for any documented direct out-of-pocket, non-Federal funds expended or obligated by the State or a political subdivision thereof between January 1, 1978 and December 11, 1980 for cost eligible response actions. The State has claimed a credit for $584,459.29 of such expenditures and has provided a verified accounting of its expenditures to the EPA Project Officer who will transfer the accounting to the EPA Inspector General and coordinate the Inspector General's determination of the State's credit. At EPA's request the State shall make available for audit the documentation supporting the accounting. EPA shall notify the State of the total amount which will be allowed as a credit toward the State's of the total amount which will be allowed as a credit toward the State's cost share. The State legislature has appropriated 3.3 million dollars to cleanup this site which could also be used to match Federal funds.
This 3.3 million dollar appropriation will be used as match for this agreement only to the extent that allowable prior expenditures are insufficient to pay for the State's 10% share of the costs.

13b. Pursuant to CERCLA 104(c)(3)(A), to the extent that O&M is required after cleanup the State agrees to assure all future maintenance and operation (O&M) of the removal and remedial actions provided for the expected life of such actions as determined by the EPA. The State shall, prior to completion of the tasks set forth in this application and subsequent Cooperative Agreement identify the State agency that will be responsible for O&M. Such actions will be the subject of requests for annual appropriation from the Michigan legislature.

13c. Pursuant to CERCLA Section 104(c)(B), the State shall assure the availability of a hazardous waste disposal facility which has adequate capacity and is able to receive the hazardous waste identified and specified for off-site storage, treatment and disposal. Such facility shall be acceptable to EPA and shall, at a minimum, comply with requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA) for any necessary off-site storage, destruction, treatment or secure disposition of the hazardous substances at the site.

13d. The State will conduct activities under this application consistently with the proposed National Contingency Plan published in the Federal Register on March 12, 1982 (47 Fed. Reg. No. 49, p. 10972). When the National Contingency Plan is promulgated the State and EPA agree to amend this agreement where feasible to address any new provisions.

13e. The State will not hold EPA liable for damages to property or injuries to persons or property resulting from the acts or omissions of the State, its employees, or its contractors in carrying out the activities performed pursuant to any Cooperative Agreement resulting from this application. The award of this cooperative agreement does not create an agency relationship between the State and EPA; furthermore EPA is not and shall not be held out to be a party of any contract entered into by the State.

13f. The State assures that safety plans prepared for activities performed pursuant to any Cooperative Agreement subsequent to this Application shall be consistent with the requirements of CERCLA Section 104(f), EPA's Occupational Health and Safety Manual and other applicable EPA safety guidance. In awarding contacts to any person engaged in response actions, the State shall require compliance with Federal health and safety standards by contractors and subcontractors as a condition of such contracts.

13g. In order to support EPA's actions to recover the costs incurred and amounts expended under any Cooperative Agreement, the State will adequately record and document the costs and expenditures incurred in undertaking the activities described in this agreement in a manner acceptable to EPA. The State shall also follow procedures acceptable to EPA to assure the legal chain of custody for the samples and materials taken from the site and shall provide a written description of those procedures to the project officer within 30 days of acceptance of the award. The State shall also ensure the availability of its records and employees for use in Federal cost recovery litigation or other litigation to compel responsible parties to take necessary actions at the site.

13h. The State will adhere to quality assurance procedures acceptable to EPA throughout all activities.

13i. The State will keep EPA informed regarding any enforcement actions taken or to be initiated at the site.

13j. The State will submit quarterly progress reports to the EPA Project Officer. These reports shall cover expenditures to date and expenditures since the previous report; estimates of work completed (as a percentage of the total work to be done on that activity), with a description of the basis for the estimates; estimated variance (cost and time) expected at project completion, based on current project status; as well as an itemization of expenditures by cost category.

13k. The State will obtain all federal, state and local permits necessary for implementing the activities addressed in this Cooperative Agreement.

13l. The State will provide access to the site, as well as all right-of-way and easements necessary to satisfactorily complete the planned response actions to the extent of its authority to do so.

13m. The State will use cost principles of Office of Management and Budget Circular A-87 applicable to this award.

13n. The State agrees to the following conditions in accepting any Assistance Agreement for the letter of credit method of financing:

(a) Cash drawdown will occur only when needed for its disbursements;

(b) Provide timely reporting of cash disbursements and balances as required by the EPA letter of Credit Users Manual;

(c) Impose the same standards of timing and reporting on secondary recipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

13o. The State acknowledges and agrees to the following:

1. The authorized budget includes indirect costs in the amount of 21.02%

2. This will consitute an allowable cost until an acceptance indirect cost rate is established. When and if an indirect cost rate is established, such costs will be allowable effective with the approved period covered in the indirect cost negotiated agreement. If the rate negotiated is lower than the rate cited in this agreement, EPA will adjust the indirect costs downward. However, if the rate negotiated is higher than the rate cited in this agreement, EPA is not obligated to adjust the indirect costs upward. The recipient must initiate negotiations for the establishment of an indirect cost rate with EPA or another Federal agency within 30 days from acceptance of the Assitance Agreement.

13p. The State will not exceed the maximum daily rate for a GS-18 for consultant services, which is currently $222.12.

13q. The State will adhere to the procurement standards of 40 CFR 33 (47 Federal Register 8960, March 2, 1982).

13r. The State will submit a final report in accordance with 40 CFR 30.635-2 and the "Scientific and Technical Publications", 5/14/74, as revised and updated at the time of report preparation.

Attachment A

FRINGE BENEFIT RATE

1981-82

|  | S&W | Aetna Health | Income Prot. | Life | Dental | Health Central | Percent |
|---|---|---|---|---|---|---|---|
| Water Quality | $1,258,577.80 | $50,768.18 | $10,404.60 | $3,033.78 | $8,338.13 | $14,226.87 | 6.89 |
| Resource Recovery | 524,253.16 | 20,424.28 | 3,776.99 | 1,264.59 | 3,402.50 | 5,414.05 | 6.54 |
| Air Quality | 1,008,517.94 | 40,742.04 | 7,241.74 | 2,441.12 | 6,156.64 | 7,584.04 | 6.36 |
| Environmental Services | 1,149,542.06 | 38,064.28 | 8,360.04 | 2,796.60 | 7,702.59 | 21,087.37 | 6.79 |

| | |
|---|---|
| 1980-81 Environmental Protection Bureau Average Insurances | 6.65 |
| Average Percent Increase 19%* | 1.26 |
| 1981-82 Environmental Protection Bureau Average Insurances | 7.91 |

This estimate is based on using 1980/81 expenditures for first 6 months of 1980-81 as reported on Department of Management & Budget GA Reports.

All expenditures will be charged at actual rates which have not been published at this time.

*See Attachment B

7/1/8

## FRINGE BENEFIT SUMMARY

To be used for all federal grants that are applied for by the Environmental Protection Bureau, Michigan Department of Natural Resources in Fiscal Year 1981-82.

### Insurances

All grant applications that involve more than one division will utilize the EPB rate. Any grant that will involve only one division will be submitted utilizing the appropriate divisional rate. Attachment A indicates the various rates by division and bureau. Attachment B indicates the percentage increase for this fiscal year.

### Retirement

The retirement rate for 1981-82 is 13.82% of total salaries paid, as indicated in Attachment B. This percentage rate includes Social Security of 6.70% and the remainder of 7.12% for contribution to the State Employee Retirement Fund. In those cases where an employee's total earnings exceed the maximum for Social Security deductions, the entire rate is placed in the State Retirement Fund.

7/1/81

Attachment A

FRINGE BENEFIT RATE

| 1981-82 | S&W | Aetna Health | Income Prot. | Life | Dental | Health Central | Percent |
|---|---|---|---|---|---|---|---|
| Water Quality | $1,258,577.80 | $50,768.18 | $10,404.60 | $3,033.78 | $8,338.18 | $14,226.87 | 6.89 |
| Resource Recovery | 524,253.16 | 20,424.28 | 3,776.99 | 1,264.59 | 3,402.50 | 5,414.05 | 6.54 |
| Air Quality | 1,008,517.94 | 40,742.04 | 7,241.74 | 2,441.12 | 6,156.64 | 7,584.04 | 6.36 |
| Environmental Services | 1,149,542.06 | 38,064.28 | 8,360.04 | 2,796.60 | 7,702.59 | 21,087.37 | 6.79 |

| | |
|---|---|
| 1980-81 Environmental Protection Bureau Average Insurances | 6.65 |
| Average Percent Increase 19%* | 1.26 |
| 1981-82 Environmental Protection Bureau Average Insurances | 7.91 |

This estimate is based on using 1980/81 expenditures for first 6 months of 1980-81 as reported on Department of Management & Budget GA Reports.

All expenditures will be charged at actual rates which have not been published at this time.

*See Attachment B

7/1/8

## WORK PLAN NARRATIVE

## Berlin and Farro Liquid Incineration

Name and Location of Site: Berlin and Farro Liquid Incineration, 8322 S. Morrish Road, Swartz Creek, Gaines Township, Genesee County, Michigan.

Description: The N½ of the N½ of the SE¼ of Section 23, T6N, R5E. See attached map.

Nature of Incident: Berlin and Farro Liquid Incineration built a liquid industrial waste incinerator at this site during 1969-70. They were granted a liquid industrial waste haulers permit in 1971. By 1974 the company had installed two million gallon storage lagoons and two seepage lagoons directly west of the incinerator. In addition, the company had obtained a permit to operate a landfill for burial of empty 55 gallon drums approximately 300 yards west of the incinerator. In 1974, investigators determined that the incinerator, which had no emission controls, and the open lagoons presented a health hazard and the company was ordered to shut the incinerator down. Since that time, the State has pursued various avenues to accomplish clean-up of the site including conditions placed on a 1976 waste haulers license, a 1978 court order, license revocation in 1979 and 1980, and court appointment of a receiver to force compliance with the 1978 court order (after a 1980 finding of contempt of court). The company filed for bankruptcy in May of 1980. One of the two parcels of property involved will probably revert to the state for delinquent taxes. Bankruptcy court controls the other parcel of property.

In May of 1981 the Governor declared a Toxic Substance Emergency at the Berlin and Farro Site due to the "severe threat of gross damage to or deterioration of the health, safety or welfare of human, animal, or desirable plant life or of the environment". (See attachment.) Under that declaration, the total $850,000 contained in the State's Hazardous Waste Contingency Fund was directed toward clean-up activities at the site. That has allowed for removal and disposal of approximately 15,300 cubic yards of sludges highly contaminated with C56 from the lagoon area. Approximately 11,000 additional cubic yards of these sludges remain on site until additional funding can be found for ultimate disposal. Odors and health problems caused by the volitilization of C56 remain a threat to nearby residents.

A magnetic survey of the site performed by Ecology and Environment, Inc. in January 1982 showed significant magnetic anomalies in the area west of the lagoons. [redacted] holding an estimated 26,000 gallons of black liquid and sludges. Analysis of the liquid in the tanks showed high percentages of hexachlorocyclopentadiene (C56) and hexachlorobenzene (C66), among other priority pollutants. (See table 1 for results of sample analysis.) Soils surrounding these tanks exhibit strong odors suggesting C-56 contamination, probably due to spillage of material during facility operation and tank leakage. Excavation guided by the magnetic survey also uncovered twenty to thirty 55 gallon drums of liquid material. The drums were partially crushed and leaking into surrounding soils. Other magnetic anomalies are being investigated on the site, and an additional magnetic survey is being conducted of the remaining acreage of the site and portions of property connected to the south of the site.

It has been estimated that approximately 20,000 barrels have been disposed of in the landfill area. The landfill permit allowed disposal of only empty drums and prohibited disposal of liquids in the landfill. Partial excavation of the landfill area has uncovered several drums containing liquid materials along with crushed barrels. It is unknown how many full barrels may have been landfilled. Since the disappearance of frost from the ground in Spring 1982, several sinkholes have developed in the landfill area. New holes continue to develop. The holes are of unknown depths (at least six feet in one case) and are filled with liquid materials within several inches of the ground surface. There is evidence that the liquid in at least one hole has overflowed and run onto the adjacent property to the south. Sample results of that material showed 160 ppb PCB (AR1254). Air sampling has also shown C56 volitilizing from the landfill area.

Groundwater from holes dug on the site was sampled in May of 1982. Analysis shows contamination with 1,2-dichloroethene, 1,1,1-trichloroethane, xylene, and toluene, among others (See attachment.) Monitoring wells on the site have shown low levels of C56 in the past, however there is reason to believe that these wells were improperly installed or damaged. The compounds shown above were not tested for in previous samplings of the monitoring wells. The hydrogeology of the area is not well defined. As is the case in much of much of Michigan, it is a depositional area. Clay deposits are predominant, however there are sand and gravel lenses and stringers which allow for producing water supply wells in the drift near the Berlin and Farro site. Excavation at one point near the lagoons showed saturated sand overlain by only four feet of clay.

Private wells in the area have been sampled for the C series compounds in the past and have been found to be clear; however the pollutants found in the May, 1982, groundwater samples had not been tested for. The Michigan Department of Public Health is now doing additional analysis of samples from private wells in the area, a number of which are in the drift aquifer.

State and Federal Actions Taken to Date: As described previously, the state has pursued remedial action through every mechanism currently available to it. Administrative and legal actions have been taken to force clean-up by the responsible party which have yielded no significant remedy. The Governor declared a toxic substance emergency at the site in May, 1981 and the state has since devoted approximately $850,000 towards site clean-up. Most of this has been to remove and dispose of a portion of the lagoon sludges. The legislature appropriated an additional $3.3 million for clean-up of the site which will be available in June 1982. As more highly toxic and liquid wastes as well as groundwater contamination have been discovered on site, it has become evident that additional funding is required to eliminate this environmental and public health threat.

U.S. EPA has funded repair and construction of sediment traps on the site to control pollutant input to Slocum Drain. In addition, efforts have been undertaken through EPA contracts to perform preliminary evaluation of remedial action alternatives and perform magnetic survey of the site.

Current Court Involvement: This case has been under litigation in Genesee County Circuit Court since 1978. The court (the Honorable Judge Ollie B. Bivins) now has jurisdiction over the site. The court appointed the firm of Black and Veatch as the receiver for the site which must review and approve all clean-up actions to be undertaken.

Present Situation and Proposed Action: At the present time there are numerous environmental and public health hazards at the site. Approximately 11,000 cubic yards of C56 contaminated lagoon sludges remain on the site. They have been covered for the most part with dirt from the site, however they are not sufficiently graded or capped to adequately prevent C56 emissions. Sources of the groundwater contamination have not been identified or controlled. Tanks containing thousands of gallons of C56 liquids & sludges remain on site. Drums of liquid wastes, both buried and exposed, are leaking into soils. The landfill area is an unknown quantity which becomes a greater concern with each new occurrence and piece of information that develops. Partial excavation has shown disposal of drums containing liquids. Over the past several months sinkholes have developed which have overflowed liquid wastes containing PBCs across the landfill surface and onto adjacent property. Emissions of C56 have been documented as coming from the landfill area. Soils over much of the property has been contaminated with the wastes handled there over time.

An immediate removal action has now been approved to provide on-site security and vapor emission control. Included in that action are fencing of the site, removal and disposal of the buried drums which were found with the aid of the magnetic survey. This action will also include removal and disposal of the liquids in the four buried tanks, if it can be shown that the tanks are leaking.

In order to resolve the hazards remaining at this site, a phased approach is proposed:

## WORK PLAN - PHASE ONE

## BERLIN & FARRO LIQUID INCINERATION

Task Description

1 Remedial Investigation - gather data necessary to 1) determine the full extent of contamination which needs to be addressed at the site, 2) identify and evaluate alternative remedial actions, and 3) provide reliable technical and cost analyses.

1.1 Accumulate and review existing data.

1.2 Develop a safety plan for remedial investigation tasks.

1.3 Conduct a hydrogeologic study.

a. Field investigation - includes drilling, well sampling, soils sampling, pulling and grouting of wells, etc.

b. Sample analyses.

c. Data analysis and assessment.

Phase One will consist of initial remedial measures which are already known to be needed at the site; and a remedial investigation/feasibility study to determine the full nature and extent of the problem, identify the most cost-effective final resolution to the problems presented by the site; and a conceptual design/plan of action and environmental assessment for the selected final remedial actions. A community relations plan will ensure public input to remedial action and the feasibility study. Initial remedial measures will include temporary capping of lagoon sludges and removal and disposal of C56 contaminated liquids and tanks, if not performed under initial removal actions. Liquids and solids uncovered during excavation will be properly contained and staged for final remedial action.

Phase Two will consist of implementation of the selected final remedial action alternatives and site closure.

Phase Three will consist of post closure operation and maintenance if necessary, and monitoring of the site.

Phases Two and Three will be covered in an amendment to this cooperative agreement.

Funding: A 90% federal/10% state cost sharing is required for the measures to be completed as a part of Phase One.

The State has documented prior expenditures of $584,459.29 which may be used to match federal CERCLA funds. These were submitted to U.S. EPA for audit May 10, 1982. To the extent that allowable prior expenditures are insufficient to pay for the State's 10% share of the costs for this cooperative agreement, State appropriations for cleanup of the site will be used as match.

1.4 Waste characterization of landfilled areas.

   a. Construct drum staging area.

   b. Excavate, segregate and analyze contents of drums of liquids and solids.

   c. Composite liquids into recovery drums.

   d. Excavate and sample other waste on the site.

   e. Develop a report characterizing the waste materials found at the site.

2. Feasibility Study - use data gathered under field investigation to: a) develop and evaluate alternative remedial actions from a technical environmental and cost-effectiveness perspective; b) recommend a cost-effective remedial action; and c) prepare a conceptual design, plan of action, cost estimate and schedule.

   2.1 Identification of response objectives and factors for evaluation of alternatives.

   2.2 Identification of alternatives.

2.3 Evaluation of and selection of alternatives.

2.4 Development of a conceptual design and plan of action with costs, schedule, and environmental assessment - includes development of an amendment to the cooperative agreement.

2.5 EPA Headquarters approval of recommended alternative and amendment to cooperative agreement.

3. Initial Remedial Measures - a response action is planned to remove liquid wastes seeping from sinkholes in the landfilled areas and illegal disposal areas at the site. In addition, temporary capping of the lagoon sludges is planned to mitigate airborne C-56 emissions during warm weather.

3.1 Justification and feasibility analysis (to be developed with state funds if performed prior to execution of the cooperative agreement).

a. Identify the problem at the site.

b. Identify the need for immediate action.

c. Develop a plan of action, safety plan, costs, and schedule consistent with the March 12, 1982 National Contingency Plan.

d. Develop an Environmental Assessment for the planned actions.

3.2 Evaluation and approval of the plan of action by EPA.

3.3 Procurement of contractor.

3.4 Implementation.

a. Temporarily cap lagoon sludges.

b. Excavate, sample and composite liquids into recovery drums and remove from landfill.

c. Remove and dispose of liquids, tanks, and surrounding soils highly contaminated with C56 and related compounds.

4 Community Relations - conduct community relations activities to ensure that acitons taken at the site are understood and reasonably supported by the local public.

4.1 Identify constituency for a mailing/contact list and develop a specific plan for communication.

4.2 Develop a periodic newsletter about the site.

4.3 Participate in township board meetings to update local officials regarding progress at the site.

4.4 Conduct public meeting to coincide with major decision points and activities at the site.

4.5 Conduct a public hearing regarding the recommended cleanup alternative and plan of action.

4.6 Develop responsiveness summaries for public meetings and hearing.

5 Project Management & Reporting - activities performed by Department staff during development of the Phase I study and initial remedial action.

5.1 Project direction, evaluation and refinement.

5.2 Technical oversight and review of contract efforts including on-site coordination.

5.3 Coordination between MDNR, EPA, TSCC, DPH, the court, contractors, etc.

5.4 Preparation of a quarterly progress report and a final Phase I project report.

## Scope of Work

TASK 1

### Remedial Investigation

The investigation will be designed to gather data necessary to 1) determine the full extent of contamination at the site, 2) determine what soils and other materials need to be addressed in the clean-up, 3) identify and evaluate alternatives for source control, and, if necessary, off-site remedial actions, and 4) provide reliable technical and cost analyses.

1.1 Accumulate and review existing data.

The existing data available regarding the site will be compiled and reviewed. Where appropriate, the data will be summarized and assessed for accuracy. Every effort will be made to prevent duplication of effort during the remaining tasks. Recommendations to refine the proposed scope of work will be made if necessary.

1.2 Develop a safety plan for remedial investigation tasks.

A safety plan will be developed to protect the health and safety of personnel involved in the remedial investigation. This plan will be consistent with:

- Section 111(c)(6) of CERCLA
- EPA Order 1440.2 - Health and Safety Requirements for Employees Engaged in Field Activities, if applicable
- EPA Order 1440.1 - Respiratory Protection, if applicable
- EPA Occupational Health and Safety Manual
- EPA Interim Standard Operating Safety Procedures and other Guidance as Developed by EPA
- Michigan Occupational Safety and Health Act

1.3 Conduct hydrogeologic study.

A hydrogeologic study is needed to determine the extent to which groundwater has been impacted in both drift and bedrock aquifers, to determine the extent of soils contamination, the compatibility of native soils with contaminants, the need for any remedial measures to deal with existing groundwater contamination, and the suitability of the site for containment of some pollutants on-site. The study should include determination of existing groundwater quality in all water-bearing formations, groundwater flow direction, and subsurface geology (particularly the extent of sand and gravel lenses in the drift, and interconnection of perched and bedrock aquifers).

Monitoring wells and soils borings would be developed and sampled to determine subsurface geology, groundwater flow directions, and existing groundwater quality (most wells should be complete in drift, with at least three wells completed in triangular pattern in bedrock - these bedrocks wells preferably drilled outside known contamination areas). The general distribution of wells/borings would be in a grid pattern, skewed perhaps to have some borings concentrated somewhat nearer the barrel disposal area and the lagoons/buried tanks areas.

Data collection and drilling will have to be coordinated with excavating activities which may be in progress.

1.4 Waste Characterization of Landfilled Areas - In order to have sufficient information on which to base development and evaluation of alternatives for remedial action, it is necessary to determine the contents of the landfill and other areas where wastes were illegally burried. Included in this task will be investigation of the landfill and other areas on the site where burial of wastes is suspected.

The old landfill area must be excavated to determine its contents., As many as 20,000 drums are estimated to be in the landfill. Many of these may be partially filled drums of solid residues or sludges that were crushed. There may be 1,000 drums or more of liquids in the landfill. There is some indication that cyanide wastes may have been placed in the landfill. In addition, there is a possibility that drums of liquids and solids are contaminated with PCBs. Preliminary laboratory analysis indicates liquids in sinkholes with PCB concentrations of 160 ug/kg and soils contaminated by overflow from the sinkholes have shown 20 mg/kg PCB. There are also reports that some carcinogenic waste may have been placed in the landfill area.

During recent construction of the fence surrounding the Berlin & Farro property an extensive area of sand, of unknown thickness, was discovered underlying just two feet of clay in an area adjacent to the landfill. On the east end of the site, 42" borings for post holes showed highly varing permeability around the perimeter of the site. Some holes filled completely with water, others were dry after 24 hours. This information, in combination with existing knowledge of the site from the 1978 Keck report, from holes dug for groundwater sampling in May 1982, and the fact that there are producing water supply wells in the drift within a half mile of the site; reconfirms the existence of sand lenses and stringers throughout the area and further precludes the possibility of utilizing the site as it exists for a secure landfill without completely removing solid and liquid wastes.

Since it is evident that all waste materials in the landfill will have to be excavated and staged for final disposal; the most efficient use of public funds would be to systematically excavate the entire landfill, rather than attempt to excavate a random percentage of the landfill for the waste characterization. Types of waste may vary significantly throughout the site and it may be difficult to excavate only a portion which would represent contents throughout. The information generated by complete excavation will be vital to completion of the feasibility study and design of final remedial measures. At the present time, both the quantity and type of wastes in the landfill can only be estimated. In order to adequately design final remedial action both of these factors need to be determined.

The following procedure will be followed to characterize the wastes illegally disposed of in the landfill and other areas on the site:

a. Construct a drum staging area.

b. Excavate, segregate and analyze drums of liquids and solids. This will include samples of the composite liquids and solids for PCBs, to determine if they must be handled in accordance with Act 64 and/or RCRA.

c. Perform compatability analysis on liquids and composite compatible materials into recovery drums.

d. Excavate and sample other wastes disposed of illegally on the site. This includes investigation of magnetic anomolies found during the magnetic surveys and other areas suspected as sites of waste disposal.

e. Analyze data generated in steps a through d and in Task 3, initial remedial action; and develop a report describing chemical constituents, quantities, concentration, locations, status (liquid, solid, contained, uncontained, combinations, etc.), compatibility, environmental and health hazard, etc.

Task 1 Outputs - Reports on site hydrogeology and waste characterization.

Resources - .2 FTE WQS VI-IX, .1 FTE EE IX

Contractural - $365,750

TASK 2

Feasibility Study

A feasibility study will be done utilizing data gathered under field investigation to 1) develop and evaluate alternatives for source control, and if necessary, off-site remedial action with regard to technical soundness, environmental impact, and cost-effectiveness; 2) recommend a cost-effective remedial action, and 3) prepare a conceptual design, plan of action, cost estimate and schedule for implementation of the selected alternative.

2.1 Identification of response objectives and factors for evaluation of alternatives.

Response objectives and the factors for evaluation of alternatives will be identified and will be based on current data and data developed during the remedial investigation, concerns for public health and environmental resources, Michigan environmental legislation; Act 245, P.A. 1929, Act 64, P.A. 1979 and Act 641, P.A. 1978, and the March 12, 1982 National Contingency Plan. Factors for evaluation of alternacives will consider environmental and public health concerns, safety, technical and practical implementability, effectiveness and reliability, operation and maintenance where applicable, and cost effectiveness.

### 2.2 Identification of alternatives.

Based on existing data and that developed during the remedial investigation, identify those alternatives which could best mitigate the hazards posed by the materials remaining on the site. These must address contaminants present in the landfill, tanks and drums, soils, groundwater, drains and vegetation and any other contaminants on-site which present a threat to the environment and public health. Removal of contaminants and disposal off site will be one of the alternatives that is fully evaluated.

2.2.1 Identify remedial activities on a source-specific basis. Proposed remedial techniques will have a demonstrated ability to meet the clean-up objectives.

2.2.2 Develop alternatives which incorporate remedial techniques, response objectives, and other appropriate considerations such as court orders, seasonal weather conditions, and disposal options available, into a comprehensive site specific approach to clean-up. Alternatives for off-site disposal, on-site containment and no-action shall be developed as appropriate. These alternatives will be developed in consultation with the Toxic Substances Control Commission, EPA, and the State Department of Public Health and will be screened to eliminate non-feasible alternatives from further consideration. The development of remedial alternatives shall include as a minimum:

1. Off-site disposal needs and transportation plans consistent with state and federal laws.

2. Description of appropriate disposal techniques and/or disposal facilities.

3. Appropriate treatment and disposal techniques and engineering considerations required where on-site containment is considered.

4. Temporary storage requirements.

5. Safety plans.

6. The degree of site clean-up to be obtained.

7. Projected environmental impacts and methods to mitigate and address effects.

8. Projected cost to implement the alternative.

2.2.3 Conduct any necessary laboratory and bench scale studies as required to evaluate the effectiveness of remedial technologies (e.g., methods to control C-56 emissions, compatibility of contaminants with native soils, groundwater treatment methods if applicable, etc.).

## 2.3 Evaluation and Selection of Alternatives

Evaluate in detail the most viable alternative remedial actions considering the factors developed under 2.1. The alternative best satisfying the evaluations factors will be recommended for implementation. This will be presented to the Toxic Substances Control Commission, the citizens of the area, the court, and EPA for input prior to selection of alternative for final remedial action.

2.4 Development of a conceptual design and plan of action with costs, schedule, and environmental assessment - includes development of an amendment to the cooperative agreement.

2.4.1 Prepare conceptual design and plan of action for the selected remedial actions with detailed cost estimates and scheduling for implementation. Specific requirements for implementation, project phasing consideration, sites of final disposal, engineering designs, safety plans, operation and maintenance plans, and other designs or plans will be included as appropriate. An environmental assessment of the proposed action will be prepared which will address the purpose of the project and environmental impacts which might occur. Long and short term and primary and secondary impacts of this action will be evaluated.

2.4.2 Develop an amendment to the phase one cooperative agreement which will extend the agreement in both time and cost as appropriate to cover phases two and three of the project. This will be submitted to EPA along with the plan of action for EPA review and approval.

Task 2 - Output - A Plan of Action for final remedial action for amendment of the cooperative agreement.

2.5 U.S. EPA Headquarters approval of recommended alternative plan of action and amendment to cooperative agreement.

Task 2 Resources - .1 FTE WQS VI
.1 FTE WQS IX
.1 FTE EE IX

Contractual - $100,600

TASK 3

## Initial Remedial Actions

A response action is planned to remove liquid wastes in barrels and seeping from sinkholes in the landfilled areas and illegal disposal areas at the site. In addition, action is planned to address the lagoon sludges on the site to mitigate airborne C56 emissions during warm weather.

### 3.1 Justification and Feasibility Analysis

The State began excavating and removing C-56 contaminated sludges from the old lagoon area in December 1981, under the direction of the Governor's declaration of emergency. Over three hundred cubic yards of sludges were excavated and shipped to Ohio for disposal in a hazardous waste landfill. A court order then required that 15,000 cubic yards of sludge be shipped to Hooker Chemical Company in Montague for disposal. Shipment of the 15,000 yds$^3$ was completed late in February 1982. At the direction of the State, contractors placed all of the remaining C-56 contaminated sludges in one location in the lagoon area. The contractors partially covered the sludges and were grading the area for drainage before State funds were exhausted and work was stopped.

The area is emitting C-56 vapors at levels which exceed the 10.0 ppb TLV recommended by the American Conference of Governmental Hygenists. The lagoon sludges must be capped to mitigate emissions of C-56 and related compounds during the warm weather. The cap must be graded to provide for drainage away from the sludge area. The latest data from ambient air samples collected on site indicate that the emissions are greater than were previously monitored in colder weather.

The old landfill may contain 20,000 drums or more of liquids and solids. The few drums that were excavated contained liquids. All were partially crushed or damaged and leaking. There is information obtained through the current investigation that indicates that many of the drums may contain PCB's. Also, there is information that cyanide wastes and carcinogenic wastes were disposed of in the landfill. There are sinkholes appearing in the landfill area. These sinkholes vary from approximately eight inches in diameter to three feet in diameter. The sink holes have liquids just beneath the surface. The liquids appear to be contaminated. Liquids appear to have migrated off-site onto adjoining property near one of the sink holes. The vegetation in the path of the migration was destroyed. Preliminary analysis of a sample from the sinkholes shows 160 ug/kg of PCB's. The liquids in the landfill must be removed, contained and disposed of immediately to prevent further migration of liquids off-site. In addition, any materials with concentrations of PCBs above 50 mg/kg must be disposed of in federally approved facilities.

A plan of action and feasibility analysis for the initial remedial measures will be submitted to EPA for approval. The plan of action will be consistent with the March 12, 1982 National Contingency Plan and will describe the remedial measures and the sequence of the remedial measures. A safety plan will be developed and submitted for each work activity to protect the health and safety of personnel involved on-site. The plan will incorporate Section 111(c)(b) of CERCLA, the EPA Occupation Health and Safety Manual and the EPA Interim Standard Operating Safety Procedures (April 1981), as well as the requirements of the Michigan Occupational, Safety and Health Act. The plan will include costs for the initial remedial measures, a schedule for implementation, and an environmental assessment of the proposed actions. Costs for development of this feasibility analysis will be borne by the state, if performed prior to execution of the cooperative agreement.

3.2 Evaluation and approval of the plan of action by EPA.

3.3 Contract Procurement

Contracts for the initial remedial measures will be submitted to EPA for approval prior to awarding the contracts to successful bidders. The procurement procedures will be consistent with the procedures required by 40 CFR 33, March 2, 1982.

## 3.4 Implementation

a. The remaining lagoon sludges must be capped, to mitigate emission of C-56 and related compounds, and graded to provide drainage. A two foot clay cap may be necessary for this cover. This would require approximately 7,260 $yds^3$ of material added to the lagoon area.

b. Free liquids in the landfill area will be removed, analyzed and transferred to new recovery drums.

c. **Four tanks containing an estimated 26,000 gallons of approximately 20% C56 liquids and sludges were discovered buried on the site.** Soils surrounding the tanks are heavily contaminated with C56 and related compounds. The liquids, tanks, and soils must be removed and properly disposed of. The C56 contaminated liquids must be incinerated, and since there are no commercial hazardous waste incinerators operating in Michigan at this time, they must be shipped out of state. The closest incinerators that may be able to dispose of this material are in Cincinnati and Chicago. If these incinerators are not viable disposal options, the liquids will have to be transported to Arkansas, Texas, or New Jersey for incineration.
CERCLA immediate removal funds have been approved for removal and disposal of these liquids and tanks if the tanks are shown to be leaking. This option will be exercised if the tanks are shown to be leaking any time prior to removal of the liquids through initial remedial action under the cooperative agreement.

Emissions from volitilization of the C series compounds during removal of the liquids and soils may be extensive. It will be necessary to control these emissions throughout the removal operation to protect nearby residents and personnel working on site.

Task 3 Resources - 0.1 FTE WQS VI-IX

Contractual - $537,150

| | | |
|---|---|---|
| Sub Task Costs: | 3.4.a. | $65,000 |
| | 3.4.b. | $71,750 |
| | 3.4.c. | $400,400 |

TASK 4

Community Relations

Community relations activities will be conducted to ensure that actions taken at the site are understood and reasonably supported by the local public. Use of varying media and styles of communication will be incorporated.

4.1 Identify constituency for a mailing/contact list and develop a specific plan for citizen relations activities.

4.1.1 Compile a list of persons and groups which have expressed interest or which would seem to have an interest in the Berlin and Farro site based on location, governmental role or other relationship to the site. The Toxic Substances Control Commission, Local Health Department, Township Clerk, and Department of Public Health will be contacted for mailing list suggestions.

4.1.2 Develop a specific plan for communicating with the project constituency. This will involve identifying major concerns of those involved, and varying means of communication which would likely be received, understood, and accepted by that constituency. Specific means of communication will be identified along with a schedule and necessary resources.

Output - a mailing list of interested parties and a specific community relations plan.

4.2 Develop a Periodic Newsletter about the Site.

Publish a newsletter including information on progress of initial remedial measures and the remedial investigation as well as forthcoming events. At least three copies will be published during the project period, at project initiation prior to the public meeting and after selection of the final remedial action alternative.

Output - 3 or more newsletters.

4.3 Participate in Township Board Meetings to Update Local Officials Regarding Progress at the Site.

Monthly township board meetings to provide update information to the board and address questions and concerns which may arise from township officials or citizens in attendance.

Output - minutes of the Board meetings.

4.4 Conduct public meetings to coincide with major decision points and activities at the site.

Conduct two public meetings; one at the initiation of the project and one following the remedial investigation during development of the feasibility study. These meetings are to solicit specific input to the project and inform area citizens of progress on the project and anticipated actions.

Output - minutes of the meetings and materials used for presentations.

4.5 Conduct a public hearing regarding the recommended cleanup alternative and plan of action.

One public hearing will be held to receive comments on the recommended cleanup alternative and plan of action for final remedial actions. This will be held in Swartz Creek in order to maximize local input. It is anticipated that there will be a public meeting several weeks prior to the hearing to present and discuss the evaluation of alternatives.

Output - A summary of the public hearing.

4.6 Responsiveness Summaries for Public Meetings and Hearing

Responsiveness summaries will be prepared for the public meetings and the hearing as well as for other meetings where significant questions or comments regarding the project arise. The summaries will include information regarding the activity conducted, subject matter discussed, summary of public views and major comments, and the agency response to those concerns.

Output - A compilation of responsiveness summaries for the project and evaluation of the effectivenss of citizen relations activities.

Task 4 Resources - .2 FTE WQS VI

TASK 5

Project Management & Reporting

Activities performed by Department staff during development of the Phase One study and initial remedial actions.

5.1 Project direction, evaluation and refinement.

Included in this task is supervision of project staff, evaluations of project progress, and refinement of the project activities as required to best meet the project objectives.

5.2 Technical review and oversight of contractual efforts including on-site coordination.

This will be the major staff effort for this project. Staff of the Emergency Response Section will be on-site during all initial remedial actions to provide technical input and oversee activities. Groundwater Quality Section staff will be on-site during the field investigation portions of the hydrogeologic study. Because both activities will be occuring simultaneously it will be important that project staff ensure the coordination and proper phasing of both remedial actions and drilling and sampling activities to preclude any adverse interference. Engineering Division staff will be involved throughout the project for engineering services.

### 5.3 Coordination between MDNR, EPA, TSCC, DPH, Court, Contractors, etc.

It is anticipated that numerous meetings, letters and telephone communication will be required to ensure proper coordination, understanding, and agreement between the various agencies which will be involved in the successful completion of this project.

### 5.4 Preparation of Quarterly Progress Reports and a Final Phase One Project Report.

Quarterly progress reports and a final Phase One project report will be prepared for submittal to EPA at the times indicated on the milestone schedule.

5.4.1 Quarterly progress reports will include information regarding the status of work at the site, progress during the quarter, problems encountered, expenditures to date and during the quarter, an estimate of the precentage of work completed, a projection of work to be accomplished in the following quarter, and any projected variations from the work plan, budget or schedule.

Output - a quarterly report and final project report.

Task 5 Resources - .5 FTE WQS VI
.1 FTE WQS VII
.2 FTE WQS IX
.1 FTE WQS X
.2 FTE EE IX

TOXIC SUBSTANCE CONTROL COMMISSION

STATE OF MICHIGAN

## DECLARATION OF TOXIC SUBSTANCE EMERGENCY

### Statement of Justification

This matter arises as a result of the discovery of very hazardous materials at the following approximate location:

> south 330' of the east 1320' of the north half of the north half of the southeast quarter - Section 23, T6NR5E Parcel No. B 327A, in the town of Swartz Creek, Gaines Township, Michigan.

Technical data and related information describing the toxic substance conditions currently present at the location indicated above has been presented to the Toxic Substance Control Commission, and has been considered by the members of the Commission on this date.

THEREFORE, after consideration of the information presented in this matter, the Toxic Substance Control Commission finds that it is necessary to take immediate action, as provided in Public Act 116 of 1978, as amended, being Sections 286.181 et seq of the Michigan Compiled Laws, to preserve the public health, safety, and welfare from the potential of death, disabling disease, or serious physical harm to humans, animals or desirable plant life due to a toxic substance.

THE COMMISSION FINDS that an amount estimated to be in excess of 11,000 cubic yards of industrial wastes and contaminated soils containing highly toxic substances are being improperly stored at the Berlin & Farro facility, Swartz Creek, Genesee County.

THE COMMISSION FURTHER FINDS that the material disposed of at this site includes but is not limited to hexachlorocyclopentadiene (C-56), 1,3,4 metheno-1H-cyclobuta(d)pentalene (Mirex), 1,1,2,3,4,4 hexachloro(1,3)butadiene (C-46), mixed isomers of 1,2,3,4,5,6 hexachlorocyclohexane (C-66), octachlorocyclopentadiene (C-58), lead, zinc, chromium and copper. This is based upon tests performed by the Department of Natural Resources.

THE COMMISSION FURTHER FINDS that the majority of these materials are toxic substances as defined in Public Act 116, PA 1978, in that they are in appropriate concentrations at the dump site alone and in combination to pose a severe threat of gross damage to or deterioration of the health, safety, or welfare of human, animal or desirable plant life or of the environment.

THE COMMISSION FURTHER FINDS that these toxic substances could pose a threat to the populace in adjacent areas. In addition, the material has been detected in Slocum Drain which runs into Swartz Creek and ultimately the Flint River.

THE COMMISSION FURTHER FINDS that without action to properly dispose of these toxic substances, the material may migrate from the site and pose a significant threat to humans and the environment.

THE COMMISSION FURTHER FINDS that current litigation in the courts has not yet progressed to a state where a cleanup is imminent, that the Berlin & Farro firm does not have sufficient assets to deal with the problem even if the money were released by the courts, and that normal existing administrative procedures are inadequate to immediately remove the threat of widespread serious harm.

FINALLY, THE COMMISSION CONCLUDES that there exists a toxic substance emergency requiring immediate action to contain the toxic substances.

## Declaration

THEREFORE, acting pursuant to Section 6 of Public Act 116 of 1978, as amended, being Section 286.186 of the Michigan Compiled Laws, the Toxic Substance Control Commission declares a toxic substance emergency effective upon signature by the Governor of the State of Michigan within the following approximate location:

> south 330' of the east 1320' of the north half of the north half of the southeast quarter - Section 23, T6NR5E Parcel No. B 327A, in the town of Swartz Creek, Gaines Township, Michigan.

Adjacent Areas: Adjacent areas as noted by use of this term in this Declaration, shall be encompassed by this Declaration and be defined as follows: All land areas impacted, or potentially impacted by the movement of toxic materials from the site described above.

## Toxic Substance Emergency Orders

Accordingly, pursuant to authority granted in Section 7 of Public Act of 1978, as amended, being Section 286.187 of the Michigan Compiled Laws, the Commission issues the following orders:

1. IT IS ORDERED, that effective immediately, the Department of Natural Resources shall be designated as the lead agency in the resolution of the problem.

2. IT IS FURTHER ORDERED, that effective immediately, the Department of Natural Resources, in conjunction with the Office of the Attorney General and the Toxic Substance Control Commission, shall take all actions necessary to obtain sufficient funding to insure said removal to an appropriate disposal site.

3. IT IS FURTHER ORDERED that the Department of Natural Resources shall appear before the Toxic Substance Control Commission at their next regular meeting and report on the feasibility of utilizing a licensed hazardous landfill or other alternatives in the State of Michigan as well as reporting on the results of actions and studies; and shall advise the Commission of any further actions which are considered necessary.

4. IT IS ORDERED that effective immediately the Department of Natural Resources shall designate a person to serve as the contact official who shall be responsible for reporting to the Commission Office on the progress being made in complying with this Declaration, as well as any new information or circumstances that occur which may affect the implementation of this Declaration.

5. FINALLY, IT IS ORDERED that terminal reports summarizing actions taken and information generated by the Department of Natural Resources as the result of the directions specified above shall be presented to the Executive Secretary of the Toxic Substance Control Commission within 60 days of the termination of the toxic substance emergency. These reports will be submitted to the Commission along with appropriate staff evaluations.

This Declaration of Toxic Substance Emergency was adopted by the Toxic Substance Control Commission, as specified by the signatures below, on April 23, 1981. This toxic substance emergency shall cease within 60 days after it is signed by the Governor; it may be continued for 60-day periods upon 2/3 vote of the Toxic Substance Control Commission and the concurrence of the Governor as required by Section 7(3) of Public Act 116, 1978.

Steven D. Aust

Dr. Steven D. Aust, Chairman

Doris E. Hughes

Dr. Doris E. Hughes

Wayne Tody

Dr. Wayne Tody

Lawrence H. Roslinski

Dr. Lawrence H. Roslinski

Walter D. Meester

Dr. Walter D. Meester

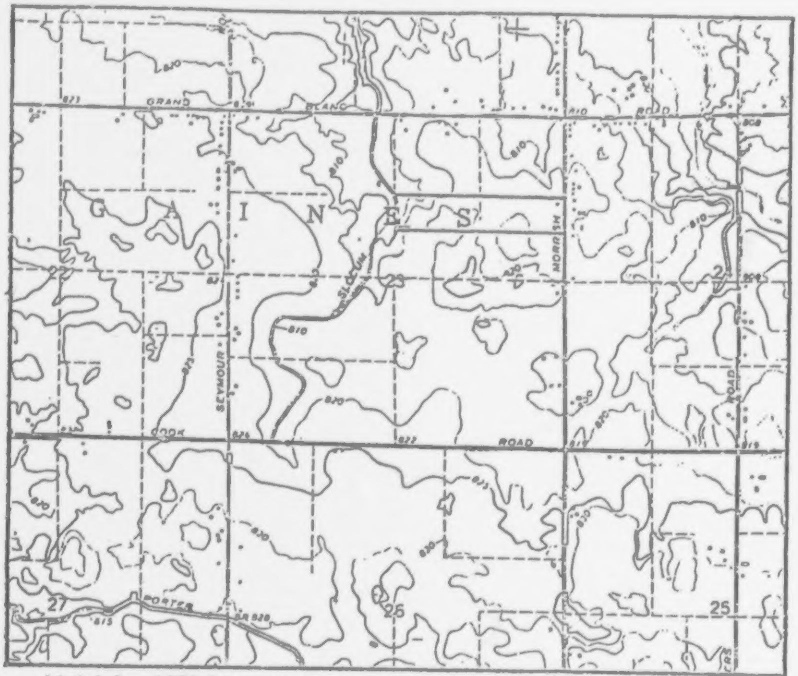
I have reviewed the action of the Toxic Substance Control Commission and I concur with this Declaration of a Toxic Substance Emergency.

*

William G. Milliken, Governor

DATE

***Original signed by governor, May 1981 - copy available on request.**

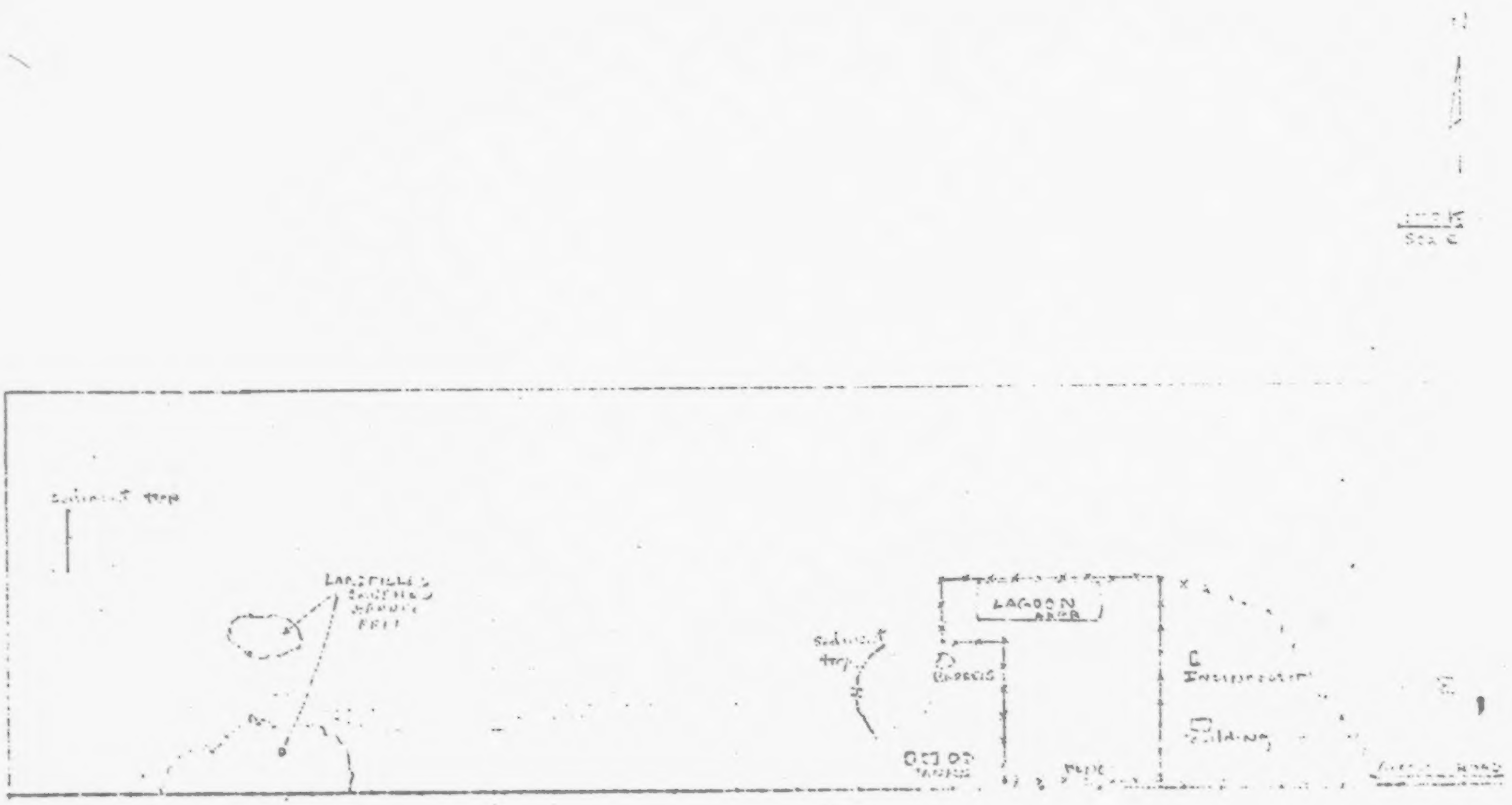

GRAND BLANC ROAD
G A I N E S
SEYMOUR
SLOCUM
MORRISH
COOK ROAD
PORTER
ROAD
22
23
2
27
26
25
810
820

Adapted from USGS Topographic 7.5 minute series, SWARTZ CREEK, MICHIGAN, 1969

LANDFILL SITE LOCATION
BERLIN & FARRO
SECTION 23, GAINES TOWNSHIP
GENESSEE COUNTY, MICHIGAN
DATE: 1-3-79

SCALE: 1/2 MILE

NORTH


Scale
LAGOON AREA
Incinerator
Building
Process
Sediment trap
Pipe
Access Road
Sediment trap
LANDFILLED

R4446

MICHIGAN DEPT. OF NATURAL RESOURCES, ENVIRONMENTAL LABORATORY ANALYSIS -- ORGANICS - WATER - GENERAL USAGE

LAB LOG# 9257 PROJ CODE GW COST CENTER ______ PR 3? COLLECTED BY L. [illegible] TRANSFERED TO ______ RECEIVED AT LAB 6 ______ EXAMINER [illegible]

LOCATION SAMPLED Berlin & Farro Swartz Cr. SAMPLE REMARKS ______ SEND RESULTS TO (NAME & SECTION) [illegible]

<------------"DO NOT PUNCH"------------>

| FIELD ID. | DESCRIPTION OF SAMPLING SITE OR SAMPLE | REF NO. P | STORET NUMBER | START DATE YYMMDD | TIME MIL TTTT | DEPTH FEET | LAB NO. 2 00008 | FE-OIL MG/L 00560 | A-1242 PCB UG/L 39496 | A-1254 PCB UG/L 39504 | A-1260 PCB UG/L 39508 | Scan 1 | Scan 2 | Scan 3 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 90'E of Gate on N side of drive | I01 | | 82 4 23 | [illegible] | | 14904 | | | | | | | | |
| 2 | 300' south 20' N of fence | I02 | | 82 4 23 | [illegible] | | 14905 | | | | | | | | |
| 3 | 60' N + 30'E of incinerator | I03 | | 82 4 23 | [illegible] | | 14906 | | | | | | U(x10) | | |
| | | I04 | | | | | | | | | | | | | |
| | | I05 | | | | | | | | | | | | | |
| | | I06 | | | | | | | | | | | | | |
| | | I07 | | | | | | | | | | | | | |
| | | I08 | | | | | | | | | | | | | |
| | | I09 | | | | | | | | | | | | | |
| | | I10 | | | | | | | | | | | | | |

| REF NO. | | | | | HCBD | HCP | OCP | HCB | Mirex | | | $CHCl_2-CH_3$ | $CHCl=CHCl$ | 1,1,1-TCE | TCE | PCE | Toluene | ethyl benzene |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 01 | | | | | K0.1 | 1.0 | 24 | 7.3 | K0.1 | | | 100 | 6100 | 830 | | | 210 | 120 |
| 02 | | | | | ↓ | 2.9 | 32 | 12 | ↓ | | | | 4 | 1 | 4 | 1 | 12 | |
| 03 | | | | | ↓ | K0.1 | K0.1 | 0.14 | ↓ | | | | 1 | | | | | |
| 04 | | | | | | | | | | | | | | | | | | |
| 05 | | | | | | | | | | | | | | | | | | |
| 06 | | | | | | | | | | | | | | | | | | |
| 07 | | | | | | | | | | | | | | | | | | |
| 08 | | | | | | | | | | | | | | | | | | |
| 09 | | | | | | | | | | | | | | | | | | |
| 10 | | | | | | | | | | | | | | | | | | |

ESD-01004 REV. 04/80

MAY 12 1982

MICHIGAN DEPT. OF NATURAL RESOURCES, ENVIRONMENTAL LABORATORY ANALYSIS -- INORGANIC - WATER- GENERAL USAGE - COMPOSITE SAMPLES

LAB LOG# 2252 PROJ CODE BUF COST CENTER ______ PR 34 COLLECTED BY [illegible] TRANSFERED TO ______ RECIEVED AT LAB [illegible] EXAMINER [illegible]

LOCATION SAMPLED [illegible] SAMPLE REMARKS ______ SEND RESULTS TO (NAME & SECTION) [illegible]

<------------'DO NOT PUNCH'------------>

| FIELD ID. | DESCRIPTION OF SAMPLING SITE OR SAMPLE | REF NO. | STORET NUMBER | START DATE YYMMDD | TIME MIL HHMM | S,T OR B | NUM SAM-PLES | END DATE YYMMDD | TIME MIL HHMM | DEP-TH FEET | LAB NO. 1 P00008 | HARD. TOTAL MG/L 00900 | CA TOTAL MG/L 00916 | MG TOTAL MG/L 00927 | NA TOTAL MG/L 00929 | K TOTAL MG/L 00937 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | [illegible] | C01 | | [illegible] | [illegible] | | | | | | [illegible] | | | | | |
| 2 | [illegible] | C02 | | [illegible] | [illegible] | | | | | | 14905 | | | | | |
| 3 | [illegible] | C03 | | [illegible] | [illegible] | | | | | | [illegible] | | | | | |
| | | C04 | | | | | | | | | | | | | | |
| | | C05 | | | | | | | | | | | | | | |
| | | C06 | | | | | | | | | | | | | | |
| | | C07 | | | | | | | | | | | | | | |
| | | C08 | | | | | | | | | | | | | | |
| | | C09 | | | | | | | | | | | | | | |
| | | C10 | | | | | | | | | | | | | | |

| REF NO. | CD * TOTAL UG/L 01027 | CR * TOTAL UG/L 01034 | CU * TOTAL UG/L 01042 | NI * TOTAL UG/L 01067 | PB * TOTAL UG/L 01051 | ZN * TOTAL UG/L 01092 | FE TOTAL UG/L 01045 | HG TOTAL UG/L 71900 | AS TOTAL UG/L 01002 | SE TOTAL UG/L 01147 |
|---|---|---|---|---|---|---|---|---|---|---|
| 01 | K.2 | K50 | K20 | K50 | K50 | K50 | | K.5 | 5.1 | [illegible] |
| 02 | ↓ | ↓ | ↓ | ↓ | ↓ | ↓ | | ↓ | 4.9 | ↓ |
| 03 | ↓ | ↓ | ↓ | ↓ | ↓ | ↓ | | ↓ | 3.3 | ↓ |
| 04 | | | | | | | | | | |
| 05 | | | | | | | | | | |
| 06 | | | | | | | | | | |
| 07 | | | | | | | | | | |
| 08 | | | | | | | | | | |
| 09 | | | | | | | | | | |
| 10 | | | | | | | | | | |

* BASIC METALS ANALYSIS INCLUDES CD, CR, CU, NI, PB, AND ZN.

ESD - 04300 08/81

INTEROFFICE COMMUNICATION

TO: Robert Courchaine, Chief, Water Quality Division

FROM: John Shaffer, Chief, Air Emissions Assessment Unit
Air Quality Division

DATE: May 25, 1982

SUBJECT: Berlin and Farro Site Cleanup

Following are my recommendations regarding the Department's proposed plan for removal of C-56 wastes from the Berlin and Farro site. These recommendations are intended to prevent, to the best of our ability, the exposure of local residents to hazardous levels of waste components in the ambient air caused by site cleanup. In making these recommendations, the following were considered:

1. Staff experience at Hooker Chemical and at the Berlin and Farro sites during cleanup.
2. Ambient sampling conducted at the Berlin and Farro site and plume dispersion analysis.
3. The toxicity (known and unknown factors) of the pollutants involved.
4. The relative close proximity of residences to the areas of excavation.
5. The extent of the unknowns regarding the concentration and location of major waste components.

Ambient Limits:

Presently, our design objective is to prevent any excursion of the 0.1 ppb C-56 limit that was established for the Hooker Chemical cleanup. This limit should be applied at the local residences and is not intended to be adhered to on the Berlin and Farro site itself. However, the appropriateness of this limit should be reviewed based on the fact that C-56 is not the major component found in the waste and in the air, and that new information regarding the carcinogenicity of C-56 and C-66 may be available. We may find that we are monitoring the wrong key compound. Staff is currently pursuing the review which should be completed prior to any major excavation.

Excavation of the Lagoon and Liquid Waste Tanks:

There are at least three major techniques for the control of waste vaporization from these areas during cleanup:

1. employment of excavation methods which minimize the exposed area at any one time.
2. conduct excavation during low air and ground surface temperatures (during winter months).
3. application of ground cover on an hourly or daily basis; i.e., foams or other sealants.

Technique number 1, although effective, has limitations due to the nature of the site. Total reliance on this approach could cause substantial delay and add cost to the project (discussion with Mr. Ollila). Technique number 2 has been proven to be beneficial and is probably the most effective means of emission control presently available to the Department. Technique number 3 is a direct approach to control and, given that a proper sealant can be found, this method could potentially effect the greatest degree of control with flexibility. However, to date, staff has been unable to locate an environmentally compatible sealant material.

In my estimation, summer excavation of these areas without the application of sealants could cause a substantial exceedance of the 0.1 ppb limit for C-56 at the surrounding residences. The extent of that exceedance cannot be accurately predicted due to the number of variables involved.

It is recommended that unless sealants can be found, excavation be postponed until the winter months. In its present state, the site will continue to cause an odor problem, but is unlikely to cause excursions of the 0.1 ppb limit at the nearest residence. Present emissions would be reduced in the event further capping is provided during the interim.

Removal of Liquid Wastes:

The major emission sources during removal of liquid wastes from the buried tanks will be the tank openings and the pump exhaust from the vacuum trucks. Both emission points lend themselves to various forms of direct control. For example, ground tank openings can be minimized by covering, and vacuum trucks can be operated at will, during periods with favorable meteorological conditions (wind direction and speed) which offer protection to nearest residences.

Given that this part of the cleanup is relatively short term and directly controllable, liquid wastes can be removed safely during the summer as proposed.

### Excavation of Drums and Landfill:

Staff has detected C-56 and other attendant pollutants being emitted from this area. Relative to the lagoon and tank areas, the drums are presently a minor source, perhaps indicative of a low volume of C-56 waste. It is conceivable that excavation of this area can be conducted safely during the summer. However, given the unknowns, it is recommended that caution be used during excavation. In the event large quantities of C-56 wastes are uncovered, remaining excavation should be postponed until winter or continued with the application of compatible sealants.

### Evacuation of Residents:

Evacuation, either short or long term, offers the best way to mitigate human exposure. During any period of excavation, it is advisable that contingency plans include evacuation. Should the Department elect to use evacuation in lieu of the aforementioned emission control techniques, a majority of adjacent residents in any one predominant wind direction may have to be included. This is due to the unpredictability of wind direction over an extended period of time and the wide plume that is characteristic of a ground level, area source emission.

In any event, the AQD staff will assist in evaluating the extent of evacuation necessary on a case-by-case basis.

### Air Monitoring:

With the potential for excursion as outlined above, a monitoring program for key compounds is necessary. I offer no specific proposals at this time, except that the level of monitoring (frequency and sites) should reflect the level of activity at the site and the magnitude of potential emissions. AQD staff will assist the Department in preparing an air monitoring program.

JS:nm

cc: Robert Miller
Dennis Armbruster
Pete Ollila

### 3.4 Implementation

a. The remaining lagoon sludges must be capped, to mitigate emission of C-56 and related compounds, and graded to provide drainage. A two foot clay cap may be necessary for this cover. This would require approximately 7,260 $yds^3$ of material added to the lagoon area.

b. Free liquids in the landfill area will be removed, analyzed and transferred to new recovery drums.

c. Four tanks containing an estimated 26,000 gallons of approximately 20% C56 liquids and sludges were discovered buried on the site. Soils surrounding the tanks are heavily contaminated with C56 and related compounds. The liquids, tanks, and soils must be removed and properly disposed of. The C56 contaminated liquids must be incinerated, and since there are no commercial hazardous waste incinerators operating in Michigan at this time, they must be shipped out of state. The closest incinerators that may be able to dispose of this material are in Cincinnati and Chicago. If these incinerators are not viable disposal options, the liquids will have to be transported to Arkansas, Texas, or New Jersey for incineration. CERCLA immediate removal funds have been approved for removal and disposal of these liquids and tanks if the tanks are shown to be leaking. This option will be exercised if the tanks are shown to be leaking any time prior to removal of the liquids through initial remedial action under the cooperative agreement.

Emissions from volitilization of the C series compounds during removal of the liquids and soils may be extensive. It will be necessary to control these emissions throughout the removal operation to protect nearby residents and personnel working on site.

Task 3 Resources - 0.1 FTE WQS VI-IX

Contractual - $537,150

Sub Task Costs: 3.4.a. $65,000
3.4.b. $71,750
3.4.c.$400,400

Klepper / Section
B & F file

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
111 [illegible] Jackson Blvd
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF
5HR-TUB

07 JUL 1982

Mr. Andrew W. Hogarth
Groundwater Quality Section
Michigan Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

Dear ~~Mr. Hogarth:~~ Andy

As discussed with Gary Klepper and Claudia Kerbawy of your staff on July 2 & 7, 1982, we offer the following comments for inclusion to the Berlin & Farro Cooperative Agreement application:

1) Approval for removal of liquids from the [redacted], and the tanks themselves, was included in the immediate removal measures at the Berlin & Farro site provided that the OSC could show that the tanks were in fact leaking and therefore constituted a threat to public health and welfare. Investigations by the OSC during the week of June 28, 1982 indicated that those tanks examined were structurally sound. Rather than continuing with the investigation of all four tanks, we feel that the State should consider including the removal of the tanks and liquids in the Cooperative Agreement application as a initial remedial measure. Additional costs should be included for this initial remedial measure to provide for the adequate control of vapor emissions from the site to protect human health i.e. erection of a building to control vapors or temporary evacuation of residents.

2) The subtask in the remedial investigation for excavation of the landfill area needs to have additional justification for excavating the entire landfill rather than a representative sample i.e. 10% of the drums.

3) The subtask in the initial remedial measure to provide for the proper disposal of PCB contaminated liquids and soils greater than 50ppm must be expanded to show cause for not staging the liquids and solids on the site until a determination is made for disposal of all liquids and solids from the site.

4) Will the State be claiming the 3.3 million dollars appropriation to fund its required 10% match for this phase one application or is the State requesting that its claimed prior expenditures of $584,459.29 be used for this activity?

Please contact Fred Norling of my staff at (312) 886-3717 if you have any questions.

Sincerely yours,

Rick

Richard E. Bartelt, Director
Office of Superfund

RECEIVED
JUL 9 1982
ndwater Qual., WQD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 30 1982

OFFICE OF
ADMINISTRATION

Mr. Gary E. Guenther, P.E.
Deputy Director, Michigan Department
of Natural Resources
P. O. Box 30028
Lansing, Michigan 48909

Dear Mr. Guenther:

I am pleased to inform you that your cooperative agreement for the Berlin and Farro Remedial Project has been selected for award. The grant offer is subject to the terms and conditions included in the enclosed assistance agreement document and attachments.

I am aware that your application, which becomes a part of the agreement, includes assurances which are identical to some of the special conditions included on the agreement document. For our own administrative convenience I have allowed the duplication. I trust this will not be a problem for you. However, if difficulties do exist please contact me and I will amend the document to eliminate the duplication.

You may accept this offer by signing the original and a copy of the cooperative agreement document and returning the original document within three weeks of the date of your receipt. You should retain a signed copy of the cooperative agreement for your records.

I appreciate your interest in environmental protection and encourage you in your efforts.

Sincerely,

Frederick L. Meadows

Frederick L. Meadows, Chief
Grants Operations Branch
Grants Administration Division (PM-216)

Enclosure

RECEIVED
AUG 2 1982
WATER QUALITY CONTROL

Grants Specialist for this Project is:
Pre[illegible] Colley; PHONE:

U.S. ENVIRONMENTAL PROTECTION AGENCY

EPA ASSISTANCE AGREEMENT/AMENDMENT

PART I - ASSISTANCE NOTIFICATION INFORMATION

1. ASSISTANCE ID NO. CX-810521-01-0

2. LOG NUMBER

3. DATE OF AWARD JUL 30 1982

4. MAILING DATE

5. [illegible]
- Cooperative Agreement X
- Grant Agreement
- Assistance Amendment

6. PAYMENT METHOD ☐ Advance ☐ Reimbursement ☒ Letter of Credit

Send Payment Request To: FMC - LV

7. TYPE OF ACTION: New

**RECIPIENT ORGANIZATION**

8. RECIPIENT
Michigan Dept. of Natural Resources
Office of Budget and Federal Aid
P.O. Box 30028
Lansing, Michigan 48909

9. PAYEE
Office of Budget and Federal Aid
Michigan Dept. of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

EIN NO. 386000134

CONGRESSIONAL DISTRICT 6th

10. RECIPIENT TYPE: State Government

11. PROJECT MANAGER AND TELEPHONE NO.
Peter Ollila (517) 373-2794
Technical Project Manager
Michigan Dept. of Natural Resources
P.O. Box 30028, Lansing, Michigan 48909

12. CONSULTANT (*WWT Construction Grants Only*) N/A

**EPA CONTACT**

13. ISSUING OFFICE (*City/State*)
Grants Administration Division
Environmental Protection Agency
Washington, D.C. 20460

14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO.
Steve Ostrodka (312) 886-7571
Project Officer (5HR-TUB)
Environmental Protection Agency, Region 5
111 West Jackson Boulevard
Chicago, Illinois 60604

15. EPA CONGRESSIONAL LIAISON & TEL. NO. Pat Gaskins (202) 382-5195

16. STATE APPL ID (*Clearinghouse*) SCH #26151/5

17. FIELD OF SCIENCE 99

18. PROJECT STEP (*WWT CG Only*) N/A

19. STATUTORY AUTHORITY PL 96-510

20. REGULATORY AUTHORITY 40 CFR, Part 30

21. STEP 2 + 3 & STEP 3 (*WWT Construction Only*) N/A
a. Treatment Level
b. Project Type
c. Treatment Process
d. Sludge Design

22. PROJECT TITLE AND DESCRIPTION "Berlin and Farro Remedial Project" - Initial remedial measure to cap lagoons, [redacted] and remedial investigation/feasibility study of ground water and landfill.

23. PROJECT LOCATION (*Areas Impacted by Project*)

City/Place: Swartz Creek

County: Genesee County

State: MI

Congressional District: 7th

24. ASSISTANCE PROGRAM (*CFDA Program No. & Title*) Superfund

25. PROJECT PERIOD 7/30/82 - 12/31/82

26. BUDGET PERIOD 7/30/82 - 12/31/82

27. COMMUNITY POPULATION (*WWT CG Only*) N/A

28. TOTAL BUDGET PERIOD COST • $1,148,715

29. TOTAL PROJECT PERIOD COST $1,148,715

| FUNDS | FORMER AWARD | THIS ACTION | AMENDED TOTAL |
|---|---|---|---|
| 30. EPA Amount This Action | N/A | $1,033,844 | N/A |
| 31. EPA In-Kind Amount | | | |
| 32. Unexpended Prior Year Balance | | | |
| 33. Other Federal Funds | | | |
| 34. Recipient Contribution | N/A | 114,871 | N/A |
| 35. State Contribution | | | |
| 36. Local Contribution | | | |
| 37. Other Contribution | | | |
| 38. Allowable Project Cost | N/A | $1,148,715 | N/A |

39. FISCAL

| Program Element | FY | Appropriation | Doc. Control No. | Account Number | Object Class | Obligation/Deoblig. Amount |
|---|---|---|---|---|---|---|
| TFAY9A | 82 | 68/20X8145 | E2A065 | 2TFA725L41 | 41.83 | $ 125,464 |
| TFAY9A | 82 | 68/20X8145 | E2A066 | 2TFA725M41 | 41.83 | $ 99,383 |
| TFAY9A | 82 | 68/20X8145 | E2A067 | 2TFA725R41 | 41.83 | $ 801,094 |
| TFAY9A | 82 | 68/20X8145 | E2A068 | 2TFA725W41 | 41.83 | $ 7,903 |

PART II–APPROVED BUDGET

ASSISTANCE IDENTIFICATION NO.

| TABLE A – OBJECT CLASS CATEGORY (Non-construction) | TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST |
|---|---|
| 1. PERSONNEL | $ 63,037 |
| 2. FRINGE BENEFITS | 13,698 |
| 3. TRAVEL | 6,300 |
| 4. EQUIPMENT | -0- |
| 5. SUPPLIES | 3,050 |
| 6. CONTRACTUAL | 1,046,500 |
| 7. CONSTRUCTION | -0- |
| 8. OTHER | -0- |
| 9. TOTAL DIRECT CHARGES | $ 1,132,585 |
| 10. INDIRECT COSTS: RATE 21.02% BASE SWFB | 16,130 |
| 11. TOTAL (Share: Recipient 10 % Federal 90 %) | $ 1,148,715 |
| 12. TOTAL APPROVED ASSISTANCE AMOUNT | $ 1,033,844 |

| TABLE B – PROGRAM ELEMENT CLASSIFICATION (Non-construction) | |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |
| 7. | |
| 8. | |
| 9. | |
| 10. | |
| 11. | |
| 12. TOTAL (Share: Recipient ____ % Federal ____ %) | |
| 13. TOTAL APPROVED ASSISTANCE AMOUNT | $ |

| TABLE C – PROGRAM ELEMENT CLASSIFICATION (Construction) | |
|---|---|
| 1. ADMINISTRATION EXPENSE | |
| 2. PRELIMINARY EXPENSE | |
| 3. LAND STRUCTURES, RIGHT-OF-WAY | |
| 4. ARCHITECTURAL ENGINEERING BASIC FEES | |
| 5. OTHER ARCHITECTURAL ENGINEERING FEES | |
| 6. PROJECT INSPECTION FEES | |
| 7. LAND DEVELOPMENT | |
| 8. RELOCATION EXPENSES | |
| 9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES | |
| 10. DEMOLITION AND REMOVAL | |
| 11. CONSTRUCTION AND PROJECT IMPROVEMENT | |
| 12. EQUIPMENT | |
| 13. MISCELLANEOUS | |
| 14. TOTAL (Lines 1 thru 13) | |
| 15. ESTIMATED INCOME (If applicable) | |
| 16. NET PROJECT AMOUNT (Line 14 minus 15) | |
| 17. LESS: INELIGIBLE EXCLUSIONS | |
| 18. ADD: CONTINGENCIES | |
| 19. TOTAL (Share: Recipient ____ % Federal ____ %) | |
| 20. TOTAL APPROVED ASSISTANCE AMOUNT | $ |

EPA Form 5700-20A (Rev. 8-79)

CX-810521-01-0

## PART III–AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFR Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS:

*(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)*

1. EPA awards this cooperative agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This agreement is subject to all applicable EPA assistance regulations.

2. The recipient agrees to the following conditions in accepting this assistance agreement for the letter of credit method of financing:

   (a) Cash drawdown will occur only when needed for its disbursements;

   (b) Provide timely reporting of cash disbursements and balances as required by the EPA Letter of Credit Users Manual;

   (c) Impose the same standards of timing and reporting on secondary recipients, if any.

   Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

3. The cost principles of Office of Management and Budget Circular A-87 are applicable to this award.

4. The maximum daily rate for consultant services shall not exceed the daily rate for a GS-18, which is currently $221.12.

5. The recipient agrees to submit the final report in accordance with 40 CFR 30.635-2 and the "Scientific and Technical Publications"; 5/14/74, as revised and updated at the time of report preparation.

6. The authorized budget includes indirect costs in the amount of $16,130. This will not constitute an allowable cost until an acceptable indirect cost rate is established. When and if an indirect cost rate is established, such costs will be allowable effective with the approved period covered in the indirect cost negotiated agreement. If the rate negotiated is lower than the rate cited in this agreement, EPA will adjust the indirect costs downward. However, if the rate negotiated is higher than the rate cited in this agreement, EPA is not obligated to adjust the indirect costs upward. The recipient must initiate negotiations for the establishment of an indirect cost rate with EPA or another Federal Agency within 30 days from acceptance of the Assistance Agreement.

Special Conditions: (Continued)

7. CERCLA Section 104(c)(4) requires that CERCLA funded actions provide a cost-effective response which provides a balance between the need for protection of public health, welfare and the environment, and the availability of amounts from the Fund to respond to other sites. If the State requests CERCLA funding for subsequent remedial planning and implementation, EPA will evaluate the request against availability of Fund monies, and determine the appropriate funding. Nothing in this Cooperative Agreement or in the State's application for assistance commits EPA to future funding for response actions at the site.

8. Delete assurance 13(e) from the State's application and substitute the following: "Nothing contained in this Cooperative Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this Agreement to be followed by the State or its contractors during the performance of its obligations under this Agreement are for assurance of the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter relating to the subject matter of this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors or omissions of the agents, employees or contractors, of the other party entered into, committed or performed with respect to or in the performance of this Agreement.

9. The award of this Cooperative Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under CERCLA Sections 106 or 107, any other statutory provision, or common law.

10. EPA and the State agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the "responsible party", whether one or more) for reimbursement of any services, materials, monies or other thing of value expended by EPA or the State for response activity at the site described in this Agreement, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Agreement not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

11. EPA and the State agree to cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

Assistance Agreement - CX-810521-01-0

Special Conditions: (Continued)

12. EPA and the State agree that further judicial action taken by either party against a potentially responsible party for recovery of any sums expended in response actions at the site under this Cooperative Agreement shall be filed in the United States District Court for the judicial district in which the Berlin and Farro site is located, or in such other judicial district of the United States district courts as may be authorized by Section 112 of CERCLA, and agreed to in writing by EPA and the State.

13. The State is authorized to begin incurring costs under this Cooperative Agreement as soon as the EPA Project Officer authorizes the State to do so. However, costs may not be incurred prior to July 30, 1982.

14. A final Community Relations Plan must be submitted to the EPA Project Officer for approval within 30 days of receipt of the authorization from the EPA Project Officer to incur costs. The plan must be consistent with the current Superfund community relations policies dated November 18, 1981, and March 31, 1982. The community relations plan must allow for public review of feasibility studies and specifically address how the State will consult with and solicit comments from the public on draft feasibility studies.

15. If the State has not completed a community relations plan and obtained the concurrence of the EPA Project Officer prior to implementation of the initial remedial measure or the bulk tank remedy, the State agrees to seek public input on the feasibility studies for the initial remedial measure and the bulk tank remedy.

16. In accordance with Section 300.68 of the National Contingency Plan (NCP), EPA has determined that the State's proposal to undertake a feasibility study for and take action to remedy the [redacted] is a source control measure rather than an initial remedial measure. Prior to incurring any costs for remedying the bulk tanks, the State agrees to submit the results of the feasibility study to EPA for approval by the Assistant Administrator for Solid Waste and Emergency Response.

17. EPA has determined that the State's proposal to construct a staging area, and undertake excavation, sampling and analysis of the wastes in the landfill as described in Task 1.4 of the application is remedial action rather than remedial investigation. Prior to incurring any costs under this Cooperative Agreement for the Task 1.4, the State agrees to submit for EPA approval a feasibility study evaluating whether the no-action and on-site containment alternatives are feasible. If the State shows that the long term remedy must involve total excavation of landfill contents, and after approval by the Assistant Administrator for Solid Waste and Emergency Response, then the EPA Project Officer will authorize the State to begin incurring costs for this task. If the study shows that either the no-action or on-site containment alternative is feasible, then the State will be authorized only to expend funds necessary to assess the general nature of buried materials.

Special Conditions: (Continued)

18. EPA does not consider the proposed Task 3 initial remedial measure to drain and restage freestanding liquids in the landfill to prevent further overflow of liquids in the landfill "sink holes" as an appropriate remedy. However, drainage of freestanding liquids in the landfill may be appropriate as part of the remedial investigation to the extent that drainage of the freestanding liquids is necessary to insure the safety of personnel performing the site investigation or to facilitate the investigation. Accordingly, EPA has reprogrammed the costs for draining and on-site restaging of the freestanding liquids into the cost to conduct the remedial investigation.

19. The State agrees to provide as part of the remedial investigation, the data that is necessary to determine the duration and residual levels of chemicals to which the affected population will be exposed as a result of each proposed remedial alternative.

20. The State agrees to submit the feasibility study evaluating the ground water and landfill remedies to EPA for approval by the Assistant Administrator for Solid Waste and Emergency Response prior to Task 2.4, development of conceptual design.

21. In addition to developing a site safety plan (Task 1.2) for investigating the landfill, the State agrees to develop and submit to the EPA Project Officer a plan describing the sampling protocols, quality controls, and quality assurance procedures the State intends to use for the investigation. The plan must be approved by the EPA Project Officer. The State agrees to assure that the approved plan for site safety, quality assurance, quality control, and chain-of-custody procedures are adhered to throughout all activities.

22. The State agrees to submit any other relevant documents and/or recommendations prepared under this Agreement to the EPA Project Officer for written concurrence prior to initiation of the next activity.

23. This award is subject to the procurement standards of 40 CFR 33 (copy attached).

ASSISTANCE IDENTIFICATION NO. CX-810521-01-0

N. SPECIAL CONDITIONS (Continued)

## PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

## OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the Michigan Department of Natural Resources (RECIPIENT ORGANIZATION)

At 90 % of all approved costs incurred up to and not exceeding $ 1,033,844 (ASSISTANCE AMOUNT)

for the support of approved budget period effort described in application *(including all application modifications)* "Berlin and Farro Remedial Project" submitted 7/14/82 (DATE AND TITLE) included herein by reference.

| ISSUING OFFICE *(Grants Administration Office)* | AWARD APPROVAL OFFICE |
|---|---|
| ORGANIZATION/ADDRESS<br>Grants Administration Division<br>Environmental Protection Agency<br>Washington, D.C. 20460 | ORGANIZATION/ADDRESS<br>Office of Solid Waste and Emergency Control<br>Environmental Protection Agency<br>Washington, D.C. 20460 |

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

| SIGNATURE OF AWARD OFFICIAL | TYPED NAME AND TITLE | DATE |
|---|---|---|
|  | Frederick L. Meadows<br>Chief, Grants Operations Branch (PM-216) | JUL 30 1982 |

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2, the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

| SIGNATURE | TYPED NAME AND TITLE | DATE |
|---|---|---|
|  |  |  |

EPA Form 5700-20A (Rev. 8-79)

C [illegible]

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
111 West Jackson Blvd
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5HR-TUB

AUG 5 1982

Mr. Peter Ollila
Water Quality Division
Michigan Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

Dear Mr. Ollila:

This is to confirm our conversation of August 3, 1982, when I gave you verbal authorization to begin incurring costs under the Berlin & Farro Remedial Project Cooperative Agreement for the following tasks:

(1) Regrading and placement of a temporary cap over the lagoon area;

(2) preparation of a feasibility study to evaluate alternatives for control of the [redacted] west of the lagoon area;

(3) preparation of the community relations program; and

(4) implementation of project management and reporting associated with the above tasks.

If you have any questions regarding this authorization or other issues please feel free to contact me.

Sincerely yours,

Steve Ostrodka

Steve Ostrodka
EPA Project Officer

# HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

## (Management of the Superfund Cleanup Program)

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WEDNESDAY, MARCH 9, 1983

House of Representatives,
Subcommittee Investigations on and Oversight,
Committee on Public Works and Transportation,
*Washington, DC.*

The subcommittee met, pursuant to call, at 2:10 p.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

Today the Subcommittee on Investigations and Oversight of the Public Works and Transportation Committee continues its inquiry into the matter of hazardous waste disposal and examination of water resources.

Our witness this afternoon will be Mr. Robert M. Perry, Associate Administrator and general counsel of the United States Environmental Protection Agency. In that capacity he is responsible for the Superfund law, among other things. I might say that as we go through these hearings, and today is another one of those in a series, that while we are going to be asking a number of questions that have arisen from time to time during these hearings or hearings of other subcommittees, that we should not lose sight of the ultimate thrust of our investigation, which is the Superfund Program itself and the matter of hazardous waste contamination of water resources and what we in the Congress and those in the administration can do to make the program effective in order to protect public health.

Mr. Perry, we welcome you back to this room and to the subcommittee. I believe you have testified previously before the full committee but not on this subject before the subcommittee.

Your testimony will be pertinent with respect to your role and certainly your word in this area is vital on the decisions made for which your office is responsible, and they are going to figure very heavily in our inquiry.

In this regard I want you to know that we appreciate your being here to assist us in our inquiry and that we know you will continue to cooperate with us and make yourself available for future hearings as matters progress in our inquiry which as I have said before is not just going to be a short-term look but we are going to carry the matter forward, so we will no doubt be wanting to hear from you at a later time.

I know that the demands on your time both in your capacity as general counsel and Associate Administrator are great as are the additional burdens in recent weeks of congressional appearances. So I am mindful of that and we will try to work out schedules which are not unduly burdensome for either of us.

At this time I would like to inquire whether the gentleman from New York, Mr. Molinari, would like to make an opening statement.

Mr. **Molinari**. I don't have a formal statement, Mr. Chairman, but I think it would be helpful to us, if Mr. Perry would identify for us those members that he has accompanying him here today from EPA or wherever.

Mr. **Perry**. Yes, sir, I would be glad to.

On my left is Mr. Richard Mays who is our, acting deputy enforcement counsel. If I may, I would like him, Mr. Chairman, to assist me in the submittal of documents and keep me apprised of those areas that may be helpful to me during my testimony.

I also have with me the deputy general counsel, Mr. Yamada, who is right behind me who will be available. I have Mr. Fred Stiehl from our enforcement office, he is an attorney on my staff; Mr. Jerry Bryan who is in our management operations office who will be available, and Mr. Don Nantkes who is on my staff in the general counsel's office who will be available if we need his assistance.

Mr. **Levitas**. Thank you, Mr. Perry.

Does any other member of the subcommittee desire to make an opening statement at this time?

If not, again in accordance with our routine and regular procedures, there is no special action being taken today, I will advise you that you have a right to be accompanied by counsel and to have a copy of the rules of the committee for your use.

Do you have a copy of the rules?

Mr. **Perry**. Yes, sir, I do.

Mr. **Levitas**. Then I suppose if Mr. Mays is going to be with you at the table it might be well for him also to be sworn in at this time and if other people are going to be testifying we can take them as the time goes on.

So if you, Mr. Perry and Mr. Mays, would please rise.

[Witnesses sworn.]

Mr. **Levitas**. Thank you.

Mr. Perry, do you have an opening statement that you care to make?

Mr. **Perry**. Yes, sir, I have a short opening statement that I would like to deliver with the permission of the Chair.

Mr. **Levitas**. You may proceed.

## TESTIMONY OF ROBERT M. PERRY, GENERAL COUNSEL AND ASSOCIATE ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY RICHARD MAYS, ACTING DEPUTY ENFORCEMENT COUNSEL; AND GERALD YAMADA, DEPUTY GENERAL COUNSEL, U.S.E.P.A.

Mr. **Perry**. Mr. Chairman, EPA greatly appreciates the efforts of this subcommittee and particularly this Chairman in resolving the conflict over access to the documents you have requested.

We stand firmly behind the procedure agreed to by your committee and the agency in providing access to agency documents. This committee now has access to the documents that were requested last October. I hope the subcommittee will review these documents as expeditiously as possible because I am certain your review will show the Superfund statutes have been correctly administered.

As the chief enforcement officer of the agency no one is more concerned that the environmental statutes, particularly the Superfund law, be strongly enforced.

In this regard EPA has a good enforcement record.

In the last 6 months of fiscal year 1982, our regional offices referred over 170 enforcement cases to EPA headquarters. One hundred and one of these cases were referred to the Department of Justice. Fifty-one of the cases referred from the regions were hazardous waste cases.

In August 1982 the Agency settled the Chem-Dyne Superfund case. This was a $2.4 million settlement wherein 109 companies contributed to clean up a hazardous waste facility in Hamilton, OH. That same day as a settlement, EPA filed suit against 25 other companies and individuals who refused to participate in the settlement.

In October 1982, EPA filed a consent decree that was approved by the Federal district court in the *Seymour, IN Superfund* case. The decree provided for complete surface cleanup at the site. The $7.7 million cleanup provision and the $15 million cleanup bond posted by the settling companies were major factors in enabling the U.S. district court which wrote a lengthy opinion on the case, to hold that the settlement was fair, reasonable and within the public interest and the objectives of the Superfund law.

In November 1982, EPA and the State of Michigan obtained a court-approved consent decree in the *Velsicol Superfund* case which provided for a $38.5 million cleanup at several hazardous waste sites. This remains the largest settlement of an environmental case since the establishment of the EPA.

Overall, the EPA has negotiated 42 full or partial settlements providing for expenditures of $150 million by private industry to conduct cleanup operations at hazardous waste sites.

These settlements were entered into voluntarily by the industry. The cleanup funds were not charged against the Superfund. Most importantly, they achieved expeditious and proper cleanup of hazardous waste sites.

Since the passage of the Superfund Act the Agency has undertaken Superfund-financed actions at 65 sites obligating a total of $236 million for all Superfund activities through December 1983. The Agency has referred to the *Department of Justice 27 Superfund* cost recovery cases seeking the recovery of Superfund expenditures. To date, we have recovered $3.1 milion to be returned to the Superfund account.

It has been alleged that the primary constituents of this administration is the business community. As the chief enforcement officer for the Agency I can assure you this is simply not correct.

Our enforcement record is proof that the American people are the primary constituents of this administration. We at EPA are very proud of our record and our accomplishments.

Thank you very much, Mr. Chairman, I am available now for any questions you and your committee may have.

[The statement of Mr. Perry follows:]

### STATEMENT OF ROBERT M. PERRY

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Thank you.

Mr. LEVITAS. Mr. Perry, first of all, let me note that you have stated that the subcommittee has full access to the documents and that you hope we will proceed expeditiously. I can assure you that first of all it is my understanding that we do have full access to the documents. We have had several meetings with officials from the Justice Department and your Agency at which some of these documents have been provided to us.

Mr. Mays has participated in some of those meetings.

The rate at which we proceed will be dependent upon the rate at which the documents are being made available to us and I am informed that Carol Dinkins has contacted our staff today and has affirmed that there are additional documents now available which we will receive I would guess within the next 24 or 48 hours.

I might point out that the six sites that we have specifically designated that we are interested in looking at first, those documents have not yet been provided. I would like to find out if you know if there are any plans to provide those documents to us in this next batch?

I am also informed that we will receive another set of documents by March 15 which hopefully will include the Seymour documents, Bridgeport and so on.

Mr. **Perry**. Yes, sir, we are going to try to stick to that schedule, Mr. Chairman, as best we can. The Agency is under quite a strain at the present time but you are our top priority.

Mr. **Levitas**. As I said at the last hearing we had, it seems to me that realizing the strain that the Agency is under I would hope that someone might be thinking about whether there are ways in which we can simplify this burden that is imposed upon the Agency since it just seems to be somewhat of a convoluted process to get to where we are going to be anyhow.

Do you get my drift?

Mr. **Perry**. Yes, sir, I do, and I hope we can speed things up, Mr. Chairman.

Mr. **Levitas**. In that connection, Mrs. Burford has been quoted in the press as indicating her willingness to turn over all the EPA documents to the Congress without there being subjected to the process which is the subject matter of the memorandum of understanding between this subcommittee, the Justice Department and the White House.

That statement preceded as I recall it, the Justice Department's statement that they would not represent EPA or Mrs. Burford before congressional committees on this issue any longer and, therefore, as I recall it, she said she felt free then having heard that to provide the documents that were being called upon.

It is my understanding that Mrs. Gorsuch has been subpenaed to testify before a congressional subcommittee tomorrow seeking some of these documents and since you are the general counsel and presumably the one now advising her about this, is she going to bring those documents?

Mr. **Perry**. Sir, Mrs. Burford will be obeying the order of the President of the United States and will be invoking the President's executive privilege on those documents tomorrow.

Mr. **Levitas**. Well, we have already been over that before.

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. I have too many other questions I want to get into. I just wanted to make certain we were clear on that. I have no doubt that other subcommittees, chairmen of subcommittees will be addressing that issue in due course. I just wanted to get that clear.

Let me ask you this, Mr. Perry. Mrs. Burford has often claimed in testimony and other public statements that the reductions in EPA personnel are not detrimental to the Agency's ability to carry out its mission nor to protect the environment nor to the Agency's ability effectively and efficiently to enforce the several environmental statutes which the Congress has mandated and has placed in the charge of the Environmental Protection Agency, particularly the Superfund law.

Yet, there is increasing evidence that this is not the case. For example, in a February 25, 1983 memorandum to you Mr. Edward Kurent, the former associate enforcement counsel for Waste noted that and I quote, "The resource shortfall has reached crisis proportions."

He then goes on to say, "The Agency is running far behind the fiscal year 1983 goals that had been established, resources continue to diminish, only three sets of the secretaries who support 22 lawyers are permanent employees, the attorney-to-secretary ratio for Branch Chief and Staff Attorneys is seven-to-one."

The memo makes a number of additional observations and then goes on to note and I quote, "This program cannot continue even to tread water without additional personnel and support."

Similar conditions have been observed to exist by our subcommittee staff in some of your regional offices. In another documents, one of those so-called redacted enforcement-sensitive documents that you and the Justice Department have provided the subcommittee, similar problems are specifically identified, specific problems in those redacted and enforcement-sensitive documents. This document—I will not mention its name so that the integrity of your case against outstanding nonsettling parties in a certain matter will not be jeopardized—but in this instance the document notes that we recommend that EPA not add all nonsettling responsible parties for the following reasons. And it notes among other things, "resource constraints."

Now, in light of this I am wondering how you can—how EPA can make that contention. Mr. Kurent as you know wrote a letter to you on March 4 and he said:

> We both know that you tried on a number of occasions to address both personnel and office space problems unfortunately without success. I know that you as a professional manager would have remedied these problems if it were in your power to do so. Regrettably in a time of shrinking resources for EPA and the Federal Government as a whole the resource problems were not resolvable at that level.

As I understand, you report to the Administrator, Mr. Perry, and I wanted to know if you had ever taken this problem up with the Administrator; what did she say; do you agree with Mr. Kurent's assessment; and do you agree that his assessment of the problems facing your enforcement staff's ability to function and carry out the law is a correct one?

Mr. PERRY. Yes, sir, and I appreciate your concern on this matter. When Mr. Kurent wrote this February 25, 1983 letter, he was in a total state of frustration with the tremendous burdens that were cast on his office, with the congressional inquiries from the five committees. Going through the redacted document process and through the state of events really put a burden on Mr. Kurent and I can appreciate his frustration.

To remedy this we did, I immediately went to the Administrator and I asked her for additional resources, Mr. Chairman, and at our budget hearing we had before Congressman Boland last week, the Administrator announced that she was looking very favorably upon my request and I understand she is going to act on it today.

I have an additional 63 FTE's and the procedure—if she approves it today the procedure is that it then goes on to OMB, they review it, and then it comes to this Congress for approval. I am hoping that it will move quickly and rapidly because it is a need that I think can help us do a better job in getting these extra resources.

Mr. LEVITAS. What concerns me, Mr. Perry, I think that there have been people at EPA who have known this for quite some time and it is not just something that has come out in the last month or so, it has been something that was——

Mr. PERRY. But Mr. Chairman, if I may, to contrast where we were before we got involved with the situation we are in today, if you look at our record you know we have referred to the Department of Justice 170 cases in a relatively short period of time. These were with the resources Mr. Kurent received in his 1983 budget proposal.

We thought and we based those resources on work models that were done with, I think, pretty good management efficiency. We took actual case referrals, administrative orders, and the legal advice that the lawyers give to the programs both in the region and in our headquarters. We took all of those numbers of actions that they work on and made a work model out of that and it equated to roughly the resources that Mr. Kurent was given.

But as we all know, actual reality a lot of times involves more than work model presentations and what they give us and I think that our additional resource request will indeed remedy the situation. But I do want to make clear that our past record of referrals shows that the resources that were indeed allocated prior to the time we became involved with massive paper demands were indeed able to produce the cases that we in fact referred to the Department of Justice and amounted in fact to the good consent decrees that we have been able to report to you today.

Mr. LEVITAS. Without objection the February 25, 1983 memorandum will be made part of the record.

[The information follows:]

#2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

25 FEB 1983

OFFICE OF
ENFORCEMENT COUNSEL

**MEMORANDUM**

SUBJECT: OEC-W Resources

FROM: Edward A. Kurent E A Kurent
Associate Enforcement Counsel for Waste

TO: Robert M. Perry
Associate Administrator and General Counsel
Office of Legal and Enforcement Counsel

I want to take one last opportunity to thank you for your support, to me personally, and in carrying out the important work in the Office of Enforcement Counsel - Waste over the last nine months. Thanks also for your generosity and kind words to the staff at my going-away party on February 18.

Before I leave for Cleveland, I do want to raise with you one last time perhaps the most critical problem facing this Division as well as Regional Counsels' hazardous waste enforcement components: The resource shortfall has reached crisis proportions.

As you are aware, at present staffing levels, this Division can reasonably be expected to accomplish quality support for ongoing litigation and little else. (See my January 12, 1983, memorandum to Michael Brown, attached.) In addition to quality support for ongoing litigation, however, the Division has provided continuing review of voluminous enforcement records (even hauling and copying) necessary to comply with the various Congressional subpoenas for information. The Division has also routinely supplied review and processing of additional case referrals to the Department of Justice, review of all significant administrative orders (106s and 3013s), policy development, review of applications for RCRA State authorization, and general client office support. Even these projects represent only a fraction of the high priority, time-consuming responsibilities that are assigned to and are being carried out by this office.

As you know, the workload is only increasing. The Agency is running far behind the FY 83 "goals" that have been established by OSWER that require enforcement legal support. Therefore, a significant increase in all client office activity must be anticipated in the remainder of the year. The RCRA Subtitle C program is already demanding a greater commitment of time and attention and all projections are for further increase in workload. Also, to the extent that additional cases have been referred to the Department of Justice, they necessitate ongoing support.

In contrast, resources continue to diminish. The staffing levels in the Regional Counsels' offices have been decreased for FY 83. The OEC-W staffing level at headquarters has dropped from 38 FTEs in May 1982 to 26 FTEs now. Only three of the secretaries who support 22 lawyers are permanent employees. The attorney to secretary ratio for Branch Chiefs and staff attorneys is 7 to 1.

This alone is discouraging, but there are additional aggravating facts that should be emphasized: The Division has no nonclerical administrative support; there is a critical shortage of filing cabinets; access to our unlighted, unheated building on weekends is always difficult and often impossible, and there has been no action to date on important personnel matters including conversions from temporary to permanent status for three employees who constitute a significant part of our institutional memory and experience, as well as routine career ladder promotions for three attorneys and three secretaries. In addition, the two law clerks who were working for the Office were notified in December that they would be terminated, and their employment has been extended only through the end of February.

The most recent personnel shifts leave this office with a new client office chief, a new Enforcement Counsel. While we have been located inconveniently for the last nine months in an office building separate from the hazardous waste program office staff, the latest proposal for an office move to Waterside would leave the staff spread out on three levels of Waterside Mall.

There has been a sincere, concerted effort on the part of the entire staff not to "drop the ball" on any project. Every management efficiency that I can identify has been instituted. Much of what this Division has accomplished to date (including the Congressional subpoena compliance work) is due exclusively to the considerable, continued, unpaid overtime effort by the professional staff.

This sustained, high intensity effort in the face of reorganization, changing roles and inadequate resources has taken a serious toll. With inadequate support, little response to that problem to date, and no relief on the horizon, the quality and quantity of work product has begun to reflect the fatigue and low morale of the staff.

I recommend that addressing the resource shortage in OEC-W be made your highest, short-term priority. I am sure Regional Counsels would want similar consideration. In spite of management efficiencies, good policy and good intentions, this program cannot continue even to tread water without additional personnel and support.

Attachment

cc: Acting Enforcement Counsel
    Regional Counsels

Mr. LEVITAS. I think the entire memorandum is very revealing. You say that the recommendations called for that you are making now, call for 63 new attorneys?

Mr. PERRY. I am not sure whether those would be all attorneys. Approximately 80 percent will be attorneys.

Mr. LEVITAS. Will these people all be assigned to headquarters?

Mr. PERRY. No, sir, they will be split up in the regions and our headquarters.

Mr. LEVITAS. Do you have a breakdown of that assignment?

Mr. PERRY. I can get you one for the record.

Mr. LEVITAS. We would appreciate having that.

One other thing that I want to ask about that. Is this what you call model?

Mr. PERRY. Our work model.

Mr. LEVITAS. Work model.

When was that prepared by Mr. Kurent?

Mr. PERRY. He prepared that in conjunction with Mr. Gerald Bryan, our Budget Officer. That was prepared before our budget submittal.

Mr. LEVITAS. Last year?

Mr. PERRY. Yes; for last fiscal year.

Mr. LEVITAS. Did that work model call for these positions?

Mr. PERRY. Not these additional 63, no, sir.

Mr. LEVITAS. So these 63 are over and above what he was calling for at that time?

Mr. PERRY. That is correct.

Mr. LEVITAS. OK. So is it now fair to say that the concern which has been expressed by this subcommittee and other committees in the Congress that EPA indeed needs more resources to get this job done is being—becoming the policy of the Agency?

Mr. PERRY. From my perspective I can say that is correct.

Mr. LEVITAS. I have another whole series of questions I want to get back to, concerning your prior testimony on the shredders and documents and some things of that sort but out of deference to my colleagues I will not pursue them at this time. I recognize the gentleman from New York, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. Perry, in your opening statement you made reference to the fact that in fiscal year 1982 170 enforcement cases were sent to EPA headquarters. Of that number, 101 were referred to Justice.

Mr. PERRY. Yes, sir.

Mr. MOLINARI. Can you tell us why the number was as high as it was?

Mr. PERRY. Yes, sir; because we organized our enforcement office into an integrated unit. I was appointed the Associate Administrator in late March 1982. Upon that appointment I put together a task force. I have the task force report right here and I would like to submit it to the subcommittee because it lays out all the problems we inherited and had to remedy. It is the key to our case development concept. When we got our case development concept organized, it started generating the cases.

Our case development concept was based on what we call the Quantico accords, Mr. Molinari. That was the result of the Justice Department and EPA getting together an agreement where we could put the lawyer from the Department of Justice in the case development stage at the earliest possible time.

Mr. MOLINARI. Let me interrupt if I may because we are heading in a different direction than I intended.

We had testimony here last week from Mr. Hedeman and Mr. Lucero in response to some questions I had asked with reference to a quota system set up for the regions. They had answered that Mr. Daniels had set up a quota system for the various regions and Mr. Lucero, if I recollect his testimony correctly, said no, it was Mr. Perry—you are smiling?

Mr. PERRY. That was before my appointment.

Mr. MOLINARI. What did you do before that appointment?

Mr. PERRY. I was general counsel at the time.

Mr. MOLINARI. So you were still in charge of enforcement, were you not?

Mr. PERRY. No, sir.

Mr. MOLINARI. You supervised it?

Mr. PERRY. No; not at that time. It was a separate office from the general counsel's office at that time.

Mr. MOLINARI. Then are you telling me that Mr. Lucero is correct or incorrect in saying that you had something to do with this quota setup for the regions?

Mr. PERRY. He was incorrect in assuming it was my quota but I think there is possibly some truth in it. Mr. Daniels did call the regional administrators and did tell them that the referrals were down and that they should move the referrals up and get the ball rolling and get on with enforcement.

We were going through a pretty serious time there and——

Mr. MOLINARI. What did you mean when you said, some truth to it? Is that what you said?

Mr. PERRY. Yes; because Mr. Daniels to my knowledge did call the regional administrators and asked them to get the enforcement referrals up. They were going down. We had new regional administrators at the time and they were not used to their new enforcement prerogative, I am sure, and he was telling them that the cases were down and to start referring.

Mr. MOLINARI. What date did you take over in your present capacity?

Mr. PERRY. I believe it was March 26.

Mr. MOLINARI. 1982?

Mr. PERRY. 1982, yes.

Mr. MOLINARI. Do you have any recollection of a document dated August 13, 1982, authored by Mr. Yamada and sent to the regional counsels discussing the reallocation of resources for fiscal year 1983. It stated that the enforcement related legal resources would be allocated to the regions depending upon the actual performance thus far in fiscal year 1982 and it goes on from there.

Do you recollect that document?

Mr. PERRY. Yes, sir; I sure do.

Mr. MOLINARI. Did you have anything to do with the preparation of that document?

Mr. PERRY. Yes, sir; Mr. Yamada discussed it with me. I thought it was a good idea.

Mr. MOLINARI. It was Mr. Yamada's idea, Mr. Perry?

Mr. **Perry**. I think it was a combination of our management technique to get cases rolling; what better method could you have than actual case referrals to show who is doing the work and who is putting out the effort?

Mr. **Molinari**. I think I can answer that question for you. A better system would be to allocate the resources where the problems exist rather than on the basis of performance from a prior year. I find it rather incredible that anybody at EPA would make a determination that resources would be reallocated on the basis of performance. Indeed, some of the regions obviously would not have the same performance record that other regions would.

In region II, New York, NY, according to the schedule that appears attached to Mr. Yamada's memo during fiscal year 1982, the current distribution of full-time employees was 27. Based on performance you are going to cut that down to 12.5. Is that correct?

Mr. **Perry**. That sounds about correct, yes, sir.

Mr. **Molinari**. Region II takes in New York and New Jersey, with New Jersey having more toxic sites than any other State.

Mr. **Perry**. Let me add this, Mr. Molinari, to relax your anxieties. That was an attempt in trying to reach an ultimate resource allocation. That was not the actual resource allocation. What we were doing was trying to get some practical commonsense basis to allocate resources.

Mr. **Molinari**. You were really pressuring these people, weren't you?

Mr. **Perry**. Sir, we have got to do something in order to have efficient management.

Mr. **Molinari**. I know, this was——

Mr. **Perry**. It is a management tool to see what we could assign to the regions in order to have an efficient operation. We owe it to the taxpayers to have efficient management. We cannot have a lot of excess personnel that are not pulling their load.

Mr. **Molinari**. For God's sakes, Mr. Perry, if you have a region that isn't producing, wouldn't common sense dictate that you do something about replacement of the people at that region, rather than reallocating resources to the detriment of that region where they may have serious problems?

Mr. **Perry**. Yes, sir; in time that is right. Remember, we are talking about a relatively short period of time. When this was put out August 13, 1982, we were allocating resources for the next fiscal year and we were trying to get for the first time the history of EPA some base. The agency is young and you have to get a base to build from. We didn't have that.

That is what we were trying to build up. The actual number that was allocated to the region is much more than the 13 allocation.

Mr. **Molinari**. I would like you to see that chart.

Mr. **Perry**. Yes, sir.

Mr. **Molinari**. Have you ever seen that before?

Mr. **Perry**. I don't exactly recall this one, sir.

Mr. **Molinari**. You have seen others like it?

Mr. **Perry**. No; not really. Mr. Yamada is here. I can ask him if this was attached.

No, sir; I have not seen that one. Neither has Mr. Yamada.

Mr. MOLINARI. Would you mind showing it to the other gentlemen to see if they recognize it at all?

Mr. PERRY. None of my staff has seen this, Mr. Molinari.

Mr. MOLINARI. I would like to call to your attention that it is my understanding this was a chart on the wall in region II headquarters. Would anybody with you have information that that might not be so?

Mr. PERRY. I think it looks like they were really having a lot of incentive out there to get a good job done.

Mr. MOLINARI. Yes, indeed; but by the same token your chart on reallocation of resources indicates a cut from 27 to 12 full-time employees after this effort. They recognized the fact that pressure was being brought to bear on them by headquarters at EPA.

Despite all of that, it seems as though that with all the pushing, they were going to sustain a cut in work force to less than half of what they had.

Let me ask you this question: Of the 170 referrals to headquarters, did you have to kick back any of them because they were not fully and properly prepared?

Mr. PERRY. We had a very good referral rate. I think only three of those cases had to be returned.

Mr. MOLINARI. Let's talk about fiscal year 1983. How many referrals have you had in fiscal year 1983 so far?

Mr. PERRY. Totally?

Mr. MOLINARI. Tell us if you have them broken down or, if not, I will take whatever you have.

Mr. PERRY. For fiscal year 1983 referred from the regions to the headquarters, we have 26. Referred from our headquarters to the Department of Justice, 56.

Out of that number those filed by the Department of Justice is 54 for fiscal year 1983.

Mr. MOLINARI. The number of referrals to headquarters from the regions is 26?

Mr. PERRY. Yes, sir, they are down a little bit because of our involvement in the paper, correspondence with the Congress, sir.

Mr. MOLINARI. It is Congress' fault?

Mr. PERRY. Well, sir, it is a combination of things but it is down and I am quite worried that——

Mr. MOLINARI. Does it indicate, not because of the pressure you applied to regions in fiscal year 1982, that they were pushing all the cases they had close to preparation for litigation and as a consequence they so to speak dried up?

Mr. PERRY. I hope that is not the case. I think that in our hazardous waste area I was told that there are some 80 cases in our pipeline that are getting ready for the referral stage.

So this time of year the cases are traditionally down. They start coming up again in the spring. I think we are going to have a good number of hazardous waste cases that will be referred to us within the early part of the next quarter.

Mr. MOLINARI. I would like to turn my attention if I could to a Mr. James Sanderson. How long have you known Mr. Sanderson, Mr. Perry?

Mr. PERRY. I think I first met him in July of 1981.

Mr. MOLINARI. Was he then affiliated with the Environmental Protection Agency?

Mr. PERRY. I think he was serving with the agency in the capacity of a special consultant. On a consultant basis—special Government employee they call it.

Mr. MOLINARI. Do you know what period he served in that capacity?

Mr. PERRY. He served as an intermittent consultant first from March 3, 1981 through July 26, 1981. He had a second period of consultancy that commenced in October 1981 and lasted until July 1982; both consultancy type appointments.

Mr. MOLINARI. Yet you didn't meet him until October——

Mr. PERRY. No; I met him——

Mr. MOLINARI. July of 1981?

Mr. PERRY. July 1981; that is the first meeting I had with him, yes.

Mr. MOLINARI. Did you ever have any business dealings with Mr. Sanderson in the past?

Mr. PERRY. No, sir.

Mr. MOLINARI. Do you have a record of the number of meetings that you held with Mr. Sanderson alone or in company with others?

Mr. PERRY. Yes, sir, my appointment calendar should show all the meetings or most of them that I had with Mr. Sanderson at the EPA.

Mr. MOLINARI. I didn't qualify that to most of them.

Mr. PERRY. Because some of the time the meetings do not get reflected on the calendar. Sometimes he could possibly walk in and that would not be reflected on the calendar.

Mr. MOLINARI. Do you have any recollection of him walking in often to your office?

Mr. PERRY. Not often, no, sir. But on some occasions I am sure he did.

Mr. MOLINARI. Would you say that most of the meetings you had with Mr. Sanderson would be reflected in the log?

Mr. PERRY. Yes, sir, especially those that are scheduled meetings; they will be on the calendar and I believe you have a copy of the calendar. I have my original calendar here for you if you would like to have it.

Mr. LEVITAS. If the gentleman will yield.

Mr. MOLINARI. Sure.

Mr. LEVITAS. Mr. Perry, if you would furnish us your original calendar and we will return them to you, but it will enable us to proceed. Thank you.

Mr. MOLINARI. Mr. Perry, you indicated that there were two periods in which Mr. Sanderson worked for EPA as a part-time consultant, what was his job?

Mr. PERRY. He was a special consultant to the Administrator. Insofar as his relationship with our office he was primarily assisting me as General Counsel in organizational matters primarily. He was also assisting the Administator and the other senior staff primarily on policy issues, organizational issues, and matters along that nature.

Mr. MOLINARI. Do you have a copy of your calendar with you?

Mr. **Perry**. Yes, sir.

Mr. **Molinari**. Would you check December 17, 1981?

Mr. **Perry**. I believe they just took it up to you.

Mr. **Molinari**. Take it back, please.

Mr. **Perry**. Yes, sir, I have it here.

Mr. **Molinari**. Do you have the purpose of the meeting set forth in your diary?

Mr. **Perry**. Let's see. It says section 102, 103 strategy; Fields, Sanderson, Sullivan, Hedeman, Capper, Daniels.

Mr. **Molinari**. If his job was to deal with organizational matters what was he doing in a strategy meeting with you?

Mr. **Perry**. Of course that was pretty far back. He would give ideas on certain aspects of regulatory reform and I cannot remember exactly what this one was but I am sure it was on some regulatory reform issue or how were we going to look at some regulatory proposal or something along that nature.

Mr. **Molinari**. Referring to strategy?

Mr. **Perry**. That would be—I take it it says strategy; that would be within that nature.

Mr. **Molinari**. Would you look at your calendar 4 days later, December 21. Did you have another meeting with James Sanderson?

Mr. **Perry**. Twenty-first? I am not sure—that has a question mark by it. I don't remember whether we had it or not.

Mr. **Molinari**. Was one scheduled?

Mr. **Perry**. If it had a question mark it means that it was tentative and whether we had it or not. I just cannot recall.

Mr. **Molinari**. Do you have a notation there, Mr. Perry, as to what the purpose of the tentative meeting was?

Mr. **Perry**. No, sir, not on mine.

Mr. **Molinari**. Would you look at——

Mr. **Perry**. I have two sets; one was my secretary's, one was mine, so I will check mine.

Mr. **Molinari**. As long as they are not green we will take them.

Mr. **Perry**. This was in regard—it says organization. This was probably when we were determining our regional structure, Mr. Sanderson was a past regional counsel.

Mr. **Molinari**. Excuse me, the second diary you are looking at, does that indicate the meeting was held or not?

Mr. **Perry**. It still has a question mark and it has under this one, phone call. So I am not sure whether it took place or not. If it said organization——

Mr. **Molinari**. Organizational matters which was what he was hired for.

Mr. **Perry**. He probably, if he met it was on how we were going to organize our regional offices and how they were going to report to headquarters. He played a very active role in that.

Mr. **Molinari**. I can understand that.

Would you look now to February 4, 1982?

Mr. **Perry**. Yes, sir.

Mr. **Molinari**. Did you hold a meeting with Mr. Sanderson that day?

Mr. **Perry**. That one was probably held, yes, sir.

Mr. **Molinari**. Do you have any idea what was discussed that day?

Mr. PERRY. It says agency enforcement and I am sure this was on our enforcement organizational structure.

Mr. MOLINARI. OK.

Mr. PERRY. That was enforcement policy. We were putting out our task force report was on May 28, 1982, this is February.

We were at that time developing an enforcement policy that this would be shortly after I was appointed Associate Administrator and it was probably on putting together an enforcement program in the Agency.

Mr. MOLINARI. After you were appointed Associate Administrator?

Mr. PERRY. This was before I was appointed, that is right. This was when Mr. Sullivan was still there because he was shown—he is shown to be here at this meeting. Mr. Sullivan was the enforcement counsel at that time and I would have been appointed that following March.

So this was prior to my appointment, that is correct.

Mr. MOLINARI. It was about a month and a half before your appointment, wasn't it?

Mr. PERRY. I was general counsel at this time and I would usually sit in on these general meetings like this.

Mr. MOLINARI. Did you have any other meetings with Mr. Sanderson that day?

Mr. PERRY. Yes; if you look down further it says Jim Sanderson, 6:15.

I don't know if it is in yours.

Mr. MOLINARI. What was that meeting all about?

Mr. PERRY. I really don't know. It might mean that he was not at that meeting at 4 p.m. These calendars, Mr. Molinari, are hard to equate as to whether it eventually occurred with the people that are actually shown. In all probability they did, but when you see the name down further, it means that he might not have been at the meeting and you had to inform him what happened later and that could possibly have happened here.

Mr. MOLINARI. You don't have any independent recollection of what transpired?

Mr. PERRY. No, sir, I do not.

Mr. MOLINARI. Do you have a recollection of the date Mr. Sanderson was discharged, Mr. Perry?

Mr. PERRY. His last day, according to this note, was April 30, 1982.

Mr. MOLINARI. Do you have any recollection of having met with him after that date?

Mr. PERRY. Yes; he would come to visit us from time to time.

Mr. MOLINARI. You say us, who was he visiting?

Mr. PERRY. He would come to visit—he was a very close friend of the Administrator and of course he was a friend of mine and he had a lot of friends in the agency. I remember that he came in to see me during the Christmas holidays when he would have been in town.

Mr. MOLINARI. Mr. Perry, after April 30, 1982, did Mr. Sanderson have a discussion with you relating to any pending cases before EPA?

**Mr. Perry.** After April 30—to the best of my knowledge I cannot recall any. Oh, the contempt case, yes, yes. He came in to see me and asked if he could get a copy of the brief in the contempt case. That is correct. It was a very short visit.

I gave him a copy of the filed brief because he was very interested in the law of executive privilege and I did give him a copy of the brief that was filed by the Department of Justice in the Federal district court.

**Mr. Molinari.** Do you have any recollection of any other topics that were discussed after April 30, 1982 with Mr. Sanderson?

**Mr. Perry.** He came to our office—I don't recall the exact date—and asked about the nature of a special general permit, the nature of a special and general permit on some incinerator, ocean incinerating projects. I asked Mr. Yamada to come in and it was a general discussion on our permitting process and it had to do with distinguishing between a research permit and general permit. Mr. Yamada came in and we had a general discussion on that.

**Mr. Molinari.** Why would a former employee have the ability to come in and discuss the matter with you? Why would he want to discuss something like that with you?

**Mr. Perry.** Well, usually I will discuss the Agency's business with anyone who wants to come in as long as it is not improper or misconduct.

**Mr. Molinari.** Did you get impression from the discussion with him that he might have been involved in representing somebody and that this information he was seeking would have been helpful to him or his client?

**Mr. Perry.** The nature of the information we gave him was very generic in nature and his clientele did not come up.

**Mr. Molinari.** Mr. Chairman, in deference to the other members of the committee that sit here anxiously waiting. I would like to pass for the time being to give my colleagues an opportunity. I do have lots of other questions, however.

**Mr. Levitas.** Thank you. I share your enthusiasm in going forward but I know many other members of the committee do have an interest in this.

Before I recognize the gentleman from New Jersey, Mr. Roe, I just want to ask one followup question on that last point. Did you know that Mr. Sanderson represented or was affiliated with Chemical Waste Management, Inc., at the time you were meeting with him talking about the contempt of Congress matter?

**Mr. Perry.** Did I know whether he was representing them at that time?

**Mr. Levitas.** Did you know that he was affiliated with or represented Chemical Waste Management?

**Mr. Perry.** Yes, sir, I probably did.

**Mr. Levitas.** Thank you.

The gentleman from New Jersey.

**Mr. Roe.** I thank the Chairman. I am going to defer my questions at this time, Mr. Chairman.

**Mr. Levitas.** The gentleman from Illinois.

**Mr. Lipinski.** Thank you, Mr. Chairman.

Mr. Perry, Mr. Hedeman, who runs the cleanup portion of the Superfund program testified last week that many of the sites now on the priority list will not be addressed by this program and that many of the most serious sites that people know about, are not even on the 418 priority site list.

He also said that many sites will not be cleaned up by the end of this century, raising the prospect that thousands of chemical dumps around the country will continue to go unaddressed for decades to come, allowing their poisons into the Nation's water system, and that the current program is not really going to be adequate.

That is is not going to do very much to protect the environment of the American people. At the same time there was a critical staffing problem, support resource problem, and more cuts are being announced by the Agency all the time. This seems to me to be very inconsistent. Obviously on the one hand there is a great deal to do; on the other hand it seems like things are continually being curtailed.

I was just wondering if in your opinion should the Congress be considering introducing legislation to triple the tax on oil and chemical companies so that we could extend this program perhaps for the next 10 years or so that we really could have a very significant impact on cleaning up the environment in this country?

Mr. PERRY. Sir, I don't really think doubling the tax or throwing money at the problem will do it.

I think that we have shown by our past performance in generating cases from the legal standpoint and from our enforcement standpoint that we can do a pretty good job with what we have.

The problem is that we have been, I think our goals are getting a little bit muddied now because of the current problems that we are facing in trying to get on with our enforcement; with the competing needs that we are finding ourselves in by answering the congressional inquiries and going through the enforcement sensitive processing of documents.

But I think that if we could get on with our program—we were making such great strides in our enforcement effort in the last part of fiscal year 1982. I am very proud of our accomplishments. It wasn't until we got ourselves involved in this contempt matter that our efforts started to get diverted.

I would like the Congress to give us the chance to work with what you have given us, because I think we can produce. And I think the American public will be proud of us, because we were really starting to move.

Mr. LIPINSKI. Well, that may very well be true in your mind, but as I say, based upon the testimony that has been given here before this committee and all the things that I have read, it seems to me that with the problem that we have in this Nation with these types of dump sites, that we just have not put forward enough of our financial resources into the Superfund really to make a dent in the problem that we have.

Yet it seems to me that the administration is, to a certain extent, curtailing even what we have at the present time.

Now, you say to me that you don't believe any increase in taxes would be beneficial because you think that you can do a good job with what you have at the present time. But yet, if you were talking about not even finishing the 418 priority sites until after the turn of the century, it doesn't seem to me that we are really making a vigorous attempt to resolve this problem nationwide.

Mr. PERRY. Well, the problem is a huge problem. And I share your concern. It is going to have to be remedied in stages.

I think there are over 10,000 hazardous waste sites in this Nation that are very serious. We have just 419 on the list right now.

I think the efficient way to go about it is to take the most serious ones and then progress out. I think if we try to bite off too much at one time we are going to get diminishing returns.

Mr. LIPINSKI. You say that there are over 10,000, to the best of your knowledge?

Mr. PERRY. That is correct. I am on the legal side, of course.

Mr. LIPINSKI. I understand. And I certainly would not hold you——

Mr. PERRY. There is some merit to your concern when you look at the State funding problems. As you know, the States are having a hard time coming up with their 10 percent and their 50 percent.

The law requires under these remedial actions on the Superfund Act that they have to put up their 10 percent or 50 percent share, and a lot of these States are having a problem in meeting that financial commitment.

So that means that we at the EPA, when a State cannot fund its 10 percent or 50 percent share, have to go on the enforcement side and find responsible parties and bring an enforcement action under section 106 of the act, and take them to court or try to remedy it by consent decree where the States cannot come up with their financial commitment.

But that means we have to find, on the enforcement side, responsible parties that can pay for this. So where you don't have responsible parties and you don't have a State that has their 50 or 10 percent to utilize the fund, that could be a problem.

But exactly where the statistics are in that regard, I do not know.

Mr. ROE. Would the gentleman yield?

Mr. LIPINSKI. Certainly will.

Mr. ROE. You know nobody is trying to pin anybody down as to working hard. That is not the issue.

The major thrust of this committee is to determine, above and beyond the obvious, what the Congress should be doing to effectuate this program.

As the gentleman from Illinois has pointed out from the previous testimony, we have approximately 10,000 to 12,000 identifiable cases throughout the Nation. We have 419 that are on the priority list, as I understand it.

We are working on a relatively few, and then we are debating resources and the capability and what we are going to do. So what the gentleman, I think, is leading up to, if I may paraphrase, is the Superfund workable in the present posture it is in, not whether you are conducting it properly or not.

I think if we would start to conduct some of the attention to that, I don't think there are the administrative constraints. We have got to come to the point of view that $1.6 billion has been effected in a revolving fund and the question is, we've got 10,000 sites.

I want to know—and if I can impinge one more moment on the gentleman's time, I will share my time with him. We've got 65 sites in New Jersey, and the question is—and I know New Jersey has its own major effort, as you know, and so does New York. We are coming back and saying, if we've got these kinds of delays, how long is it going to take us to clean up 65 sites in one State alone? Is it going to take 20 years of litigation, to the year 2000?

And then the question comes back, which the gentleman from Illinois has so well put it, in my judgment, if it is going to take 20 years, what happens to the public health in the meantime?

Should Congress look at this bill, having nothing to do with you, and say that we made a major step forward. But it is inadequate to meet the needs in the reasonable exigency amount of time to get the job done, or do we legislate among our brothers and sisters in the Nation who will have to suffer under these kinds of issues until we get the resources to do it. That is the issue.

Mr. PERRY. Mr. Roe, I think you have a very good observation there.

You know we have a real technical aspect to all of this. The plumes that develop from these hazardous waste sites are scientifically unpredictable. We are learning a lot, but yet we know so very little.

I appreciate your concerns, because we've got a lot of technical work that still has to be done, not only in the cleanup and trying to trace plumes and where do you control them and how. Underground water movements are complex.

We have so many things that we are learning, and in a way, if you don't overwhelm the agency with massive—what if we had 10,000 sites on the list right now? It would be so overwhelming, would we be capable of doing a good, thorough cleanup?

Mr. ROE. If the gentleman would yield further, that is precisely the point we want you to get at.

If you could separate yourself and look at a broader point as the chief counsel of the agency. The Nation is subjected to this kind of intrusion from hazardous waste of enormous magnitude on the environment, namely on the water supply.

I deliberately deferred because there are certain technical questions I want to get into later as it relates to enforcement. What I would like to see you develop is, if you are saying that the policy is to go inch by inch, then we have to come back to the American people and say to them that the Superfund is a bust because we may clean a case here and clean a case there. I am not faulting that, but there are 10,000 of them.

Either this is a crisis situation to the health of American people or it is not. It has nothing to do with you and me. We are not adversaries on that issue.

I am not projecting from my point of view as a member of Congress that I have got all the answers, and I am sure you are not better. But we are coming back and saying, are the American people being fooled, and is it such that the program, the way it is presently configured, that we can't do the job?

That is really what you are saying, technically. We have to do it inch by inch. You've got to remember some of us on this committee are technically trained and we don't fault you for that.

If you will just indulge me one more second. We haven't gotten from you yet, or anybody from EPA, only the last testimony we had this one issue. In looking over the procedural matters that we are now privy to, and not second guessing your staff, there is a very serious problem that relates to what we do in identifying the impact. You mentioned it yourself on the ground water supply of the Nation.

The first approach is, let's do all the legal things we do to clean up everything on the surface, and that sort of thing. Then we have added studies to see the impact upon the water supply. I want to develop that further.

But what I am interested in is just what the policy position is of the agency, not what Congress has given you to work with. How do we move now in what you see to be, I hope, a crisis as we do?

The crisis does not lie in the confrontation with your agency. The crisis lies in the help of the people in the country. That is the issue, if you will pardon my enthusiasm.

Mr. LIPINSKI. Thank you.

I just have one last question. If we were to pass legislation in Congress that would reduce the share that States had to put up in regards to this matter, do you believe that it would accelerate the ability of the Superfund to move forward with cleaning up a number of these dumps?

Mr. PERRY. It would probably give us a little more flexibility, yes, sir. There would be more State participation available, I am sure.

Mr. LIPINSKI. The reason I asked that question is because it seemed to me by your testimony that you were inferring that the States are slowing this program down significantly by their inability to come up with the funds necessary.

Mr. PERRY. Well, that is where we don't have responsible parties. Fortunately, we have been very lucky, I think, in our cases to find responsible generators and site owners. And, indeed, the industry has been remarkably cooperative in helping and doing their share, in coming up with these consent decrees for cleanup that is not charged against the Superfund expenditures.

Mr. LIPINSKI. Thank you.

Mr. Chairman?

Mr. LEVITAS. Thank you, Mr. Lipinski.

The gentleman from Tennessee?

Mr. SUNDQUIST. Thank you, Mr. Chairman.

I want to pursue the question that the gentleman from New Jersey was asking—is new legislation needed from Congress?

Mr. PERRY. From my perspective as the associate administrator, I cannot honestly sit here and say that new legislation is necessary, because I feel, No. 1, the act gives us a lot of good tools.

Section 106 of the act is a lot of enforcement authority to go in with injunctive actions to force cleanup if we have to. Section 104 of the act gives us a lot of power to go in and get discovery. Section 107, we can come in and collect after we clean up.

So from a legal perspective, I think the act is very adequate. You do get involved with social issues, technical issues and all other kinds of issues that this Congress should look at and weigh, like Mr. Roe was saying.

Mr. SUNDQUIST. Why are we moving so slow then? Are we moving at the fastest speed?

Mr. PERRY. I think all in all with the problem that is facing this Nation—you know we just became aware of this; the law was just passed in December 1980. We have moved rapidly and, like all complex problems, when you get involved you see they are much more complex than we ever anticipated.

In that regard, I am completely amazed when I see these studies that are made on these sites with the technical problems that we are running into. The Love Canal case is a good example.

Look at our dioxin problems in Missouri. That is another example. Things that this Congress probably never envisaged when they were passing the act.

So in that regard, a suggestion that I would have would be to have a very close liaison with the EPA so that we can get our message to you in regard to the technical problems that we are looking at, and see if there is some way that we could assist in a legislative method here that may be along the objectives that would help clean up more sites in a shorter period of time.

Mr. SUNDQUIST. Mr. Perry, do you have at EPA a plan of how many sites could be cleaned up year by year?

Mr. PERRY. The program office, I understand, does have a strategic plan that they hope to accomplish.

Mr. SUNDQUIST. What should we have accomplished according to that plan at this point and how are we doing to complete?

Mr. PERRY. Well, of course, that is a program objective. We have 419 sites on the priority list, and I think the plan is to get those cleaned up by 1985, but that is very ambitious.

Mr. SUNDQUIST. Is that going to happen?

Mr. PERRY. I don't believe it is.

Mr. SUNDQUIST. Why?

Mr. PERRY. Because we run into these massive technical problems that are going to take a lot of study.

I am not an expert in this field, and I hope you will put up with my lack of technical expertise.

Mr. SUNDQUIST. I think the frustration that we have is if you have all the tools and you set goals which are not being met, why not? What do you need to meet the goals?

For instance, have you ever used the Corps of Engineers to help in cleanup?

Mr. PERRY. Yes, sir.

Mr. SUNDQUIST. Is it effective?

Mr. PERRY. I think it has been very effective. Mr. Hedeman, I think, testified to that when he was here.

Mr. SUNDQUIST. Should we be doing more of that?

Mr. PERRY. Yes; I think we could use the corps more.

Mr. SUNDQUIST. I am concerned that EPA's focus is so narrow. It has been my experience in Tennessee, when I asked the question, "how many acres of landfill are in existence capacity-wise," I could not get an answer from EPA.

I wanted to know what was our capacity right now of hazardous chemical landfill. I could not get an answer.

When there was a dump site application filed in Tennessee, EPA's only focus was on not whether it was needed, but whether or not they met the criteria. Is the state of the art now going to cause more Love Canals in the future? Are we going to have to have another Superfund to clean up what is currently EPA approved?

It is my understanding that two EPA-approved dump sites are now leaking: One in Indiana and one in Colorado. Is that true?

Mr. PERRY. Sir, I don't have any direct knowledge of that, but I do know that that is one of the problems, when is a site cleaned up, because you have to have all these monitoring wells to trace the plume and the plume usually goes in a way that no one ever expected it go to. That is a real problem.

Mr. SUNDQUIST. We have a twofold problem. One is we are not cleaning up what is there, and another one is that it looks like we are creating new ones.

Mr. PERRY. I have heard our experts say that sometimes the best thing to do with these sites is to clean up the surface and monitor the plume, because sometimes if you disturb that plume, you can make it worse if you go in and try to remove it.

Mr. SUNDQUIST. Let me change the subject, if I have more time, Mr. Chairman.

Ms. Lavelle testified it was on June 17, 1982 that she first became aware of Aerojet's involvement with Stringfellow. When did you first become aware of that problem?

Mr. PERRY. My first official awareness was when she executed the letter of recusal. That is my first actual knowledge.

Mr. SUNDQUIST. What was the date?

Mr. PERRY. The date of her recusal is June 18, 1982.

I recall telling Mr. Ed Kurent, who was the chief of our hazardous waste enforcement office, to talk to Ms. Lavelle and secure this recusal from her. He called it to my attention and we had this recusal executed.

Mr. SUNDQUIST. After that formal recusal on June 18th, were you present at any meeting where she attended and Stringfellow was discussed?

Mr. PERRY. I don't exactly recall, but it is quite possible, because during staff meetings, of course, all of the hazardous waste sites would be discussed from time to time. And as a senior staff official with the agency, a lot of times Ms. Lavelle would be present.

Sometimes, I am sure, she would get up and recuse herself, but you never know when a case is going to be coming up. But it is possible that she could be sitting in a staff meeting when the word "Stringfellow" or that site could have been mentioned, yes, sir.

Mr. SUNDQUIST. Mr. Perry, if that did occur, did you ask her to leave the meeting?

Mr. PERRY. I don't ever recall discussing Stringfellow when she was at a meeting.

Mr. SUNDQUIST. Did you ever ask her to leave a meeting?

Mr. PERRY. Not to my knowledge.

Mr. SUNDQUIST. Do you recall her ever asking to change the subject if Stringfellow ever came up at one of those meetings?

Mr. PERRY. Not in my presence, no, sir. I don't recall it.

It doesn't mean that she could not have.

Mr. SUNDQUIST. Thank you.

Mr. LEVITAS. The gentleman from Texas.

Mr. **Andrews**. Have you learned directly or indirectly whether or not she ever participated in any of those meetings?

Mr. **Perry**. On that point I would continually ask Mr. Ed Kurent, who was my enforcement attorney on the case, if he had any knowledge of Ms. Lavelle exercising any influence or any participation. His response to me was always negative.

You must remember, just being in the case itself is an appearance problem. It is not really constituting illegal conduct. It is whether she exercised any influence or made any decision. My staff never called that type of conduct to my attention.

Mr. **Andrews**. Well, my question, though, is, have you personally ever learned directly or indirectly from any source, not necessarily just your employees or just your staff, whether or not Ms. Lavelle ever participated in any discussions that involved the settlement of that lawsuit?

Mr. **Perry**. No, sir. I don't have any direct knowledge of that.

Mr. **Andrews**. Do you have any indirect knowledge of that?

Mr. **Perry**. No, sir, I do not.

I know that she had attended meetings, but I do not and I cannot say that she participated in any activity.

Mr. **Andrews**. Mr. Perry, do you know whether or not, either directly or indirectly whether or not she was ever asked to leave a meeting relative to the settlement of that lawsuit?

Mr. **Perry**. Yes, sir. I believe my staff has reported to me that they had asked her on a couple of occasions to recuse herself, and that resulted in this recusal letter of June 18.

Mr. **Andrews**. Ms. Lavelle testified before this committee that she had never been asked to leave the room and recuse herself during settlement negotiations of that lawsuit. Are you saying that is incorrect?

Mr. **Perry**. Well, I don't know what occasions. I did not pinpoint any precise meeting. All I know is that the staff reported to me that they called to Ms. Lavelle's attention the Aerojet involvement and asked her to recuse herself. Indeed I asked Ms. Lavelle, I told her on occasions too, that she should recuse herself which resulted in this June 18, 1982 letter.

Mr. **Andrews**. Well, how many occasions did you visit with her and ask her to recuse herself because of her prior employer?

Mr. **Perry**. I precisely remember one occasion that resulted in this letter where I called her and told her to execute this letter and to recuse herself from attending any further meetings in the case.

Mr. **Andrews**. What was the date that you called her?

Mr. **Perry**. It was probably the 17th or 18th of June. Right around the time of the letter. I don't recall the exact date, Mr. Andrews.

Mr. **Andrews**. When did the two events take place when she was asked to leave the room?

Mr. **Perry**. Now that I have reviewed the newspaper accounts, I understand that there was apparently a discussion with Ms. Lavelle on May 28 that I was not aware of at the time of this recusal.

Mr. **Andrews**. Have you subsequently learned the nature of that meeting?

Mr. **Perry**. Yes, sir, I have.

Mr. **Andrews**. Would you please explain that to us? What happened.

Mr. **Perry**. I was not there but I understand that Mr. Kurent pointed out to her that Aerojet was a generator in the Stringfellow case but of course I was not there when he pointed that out but according to his testimony and according to what was reported in the letter from the Dingell Committee to the President, that was his testimony.

Mr. **Andrews**. Mr. Perry, had Ms. Lavelle not been informed of the parties in that lawsuit?

Mr. **Perry**. Well, it is possible she could not have been prior to that time, sure. You usually don't see the list of generators. They pop up as the case develops.

For instance, in the Stringfellow case, the parties were found, I believe, in a shoebox in Mr. Stringfellow's warehouse and you find them in the most miscellaneous places, so you never know when they are going to come up.

Mr. **Andrews**. Do you know when Aerojet came up in that case?

Well, apparently it must have come up in the latter part of May when Mr. Kurent pointed that out to her and he must have had a list of the current generators at that time.

Mr. **Andrews**. Ms. Lavelle testified before this committee a week or so ago and stated that two of the reasons that so many cases were settled rather than litigated was because the cases were weak, evidentiary, and because the lawyers were inexperienced that were prosecuting those cases. Would you care to comment on that statement?

Mr. **Perry**. First of all the law staff at the EPA probably is one of the most professional and knowledgeable and competent staffs that we could have in this country. These people have experience that goes back to the RCRA statute. They have been on several hazardous waste task force teams. Ed Kurent was a senior litigator and you must remember we also deal with the Department of Justice in these cases.

The Department of Justice has 35 lawyers that are very seasoned, trained, litigators. I totally disagree with Ms. Lavelle in attacking our law staff as being inexperienced because these people by the number of cases that we have generated and the consent decrees that we have secured shows as a matter of record and a matter of fact that our lawyers in our law shop know what we are doing.

Mr. **Andrews**. Mr. Perry, is it your opinion that these cases in these lawsuits should be negotiated rather than litigated first?

Mr. **Perry**. On that point, Ms. Lavelle and I did have a difference of opinion. You have got to look at it in two ways. No. 1, Ms. Lavelle was not an attorney. She did not understand that you must, when you have multiple cleanup, have a decree or a contract that is enforceable and has teeth in it. My view was that on these complex negotiations where I have multiple parties, where you have millions of dollars, where you have a cleanup contract that is very complex, it should be by a court-approved consent decree.

Mr. **Andrews**. Mr. Perry, let me interrupt you for a moment. Are there any cases that have been settled that do not have that type of teeth in the settlement?

Mr. PERRY. Not too many.

Mr. ANDREWS. Would you name the ones that don't?

Mr. PERRY. Sir, I would have to supply that for the record. Usually the program can take an administrative order which is doing it by an administrative process. That has a little teeth because if you violate an administrative order I think there is a $10,000 fine for not complying. My problem there was the inability of going to the courthouse with a contempt action which is a much more volatile remedy because where you have a consent decree approved by the courts you can move for contempt.

On an administrative order you have to take that to the courthouse and start a new action.

Mr. ANDREWS. If you will supply us with a list of those cases that you do not feel have sufficient teeth in them in case the cleanup operation——

Mr. PERRY. I have got a list right here that shows that a total of $146.2 million is involved in the cleanup of 42 hazardous waste sites. In fiscal year 1981 we had $31.7 million, 1982, $45.5, 1983 is $65.

Of those this is the breakdown. Thirty are covered by the court-approved consent decrees. Eight are privately financed cleanup consent agreements. Three have been settled by administrative order and two are voluntary cost recovery. I will be happy to put that in the record.

[The information received follows:]

Consent Decrees, Administrative Orders on Consent, Voluntary Agreements to secure privately financed cleanup and Voluntary Cost Recoverie

#4

| Site | Type of Action | $ Value of Action | Date of Action | Priority List |
|---|---|---|---|---|
| 1. W. R. Grace | C.D | | FY 81 | N |
| 2. Kin-Buc | C.D. | | FY 81 | I, N |
| 3. Automated | C.D. | | FY 81 | None |
| 4. Gulf Coast Lead | C.D. | | FY 81 | None |
| 5. Laskin Greenhouse | C.D. | | FY 81 | E, N |
| 6. County of Waukesha | C.D. | | FY 81 | None |
| 7. Energy Systems | C.D. | | FY 81 | None |
| 8. Syntex Agri. | C.D. | | FY 81 | N |
| 9. Am. Ecol. Recy. Rech. | C.D. | | FY 81 | None |
| 10. Hooker "Lathrop" | C.D. | | FY 81 | None |
| 11. General Disposal | Vol. Cost recovery | $700K<br>30K | FY 81 (Q 3) | None |
| Sub-total for FY81 | | $ 38 Million | Note - Estimated $ value of individual settlements are being re-analyzed for quality assuranc | |
| 12. Spectron | C.D | 700K | FY 82 | None |
| 13. Langcaster | C.D. | 100K | FY 82 | None |
| 14. ABM-Wade | C.D. | 1.6M | FY 82 (1st qr) | I,N |
| 15. Bluff Rd. | C.D. | 1.6M | FY 82 (2nd qr) | I,N |
| 16. Waynesboro | C.D | 500K | FY 82 | None |
| 17. Ciszar | C.D. | | FY 82 (2nd qr) | None |
| 18. Vertac | C.D. | 1.3M | FY 82 (2nd qr) | I,N |
| 19. Helena | C.D. | 1M | FY 82 | None |

VOL=voluntary settlement C.D.=consent decree AO=§106 administrative order

I=Interim Priority List E=Expanded Eligibility List N=National Priority

| | | | | | |
|---|---|---|---|---|---|
| 20. Hyde Park | C.D. | 30M | FY 82 | N | |
| 21. Bridgeport | C.D. | 25K | FY 82 (3rd qr) | I,N | |
| 22. Fike | C.D. | | FY 82 | N | |
| 23. Fisher-Calo | C.D. | 50K | FY 82 | N | |
| 24. Petro Proc. | C.D. | 218K | FY 82 | None | |
| 25. LiPari | C.D. | 75K | FY 82 (3rd qr) | I,N | |
| 26. Woburn | AO(consent)<br>cost recovery | 3.5M<br>60K | FY 82 (3rd qr)<br>" " | I,N<br>" | |
| 27. New Bedford | AO(consent) | 300K | FY 82 (3rd qr) | E,N | |
| 28. Gold Coast | VOL | 220K | FY 82 (3rd qr) | I,N | |
| 29. Walcott | VOL | 177K | FY 82 (3rd qr) | I | |
| 30. Whitewood Creek | VOL | 300K | FY 82 | I,N | |
| 31. Rose Park | VOL | 1M | FY 82 | I,N | |
| 32. McAdoo | VOL<br>Cost Recovery | 2.1M<br>5 K | FY 82 (2-4qr) | I,N | |
| 33. Chem-Dyne | Cost Recovery | 2.4M | FY 82 (4th qr) | I,N | |
| 34. Aidex | Cost Recovery | 12K | FY 82 | I,N | |
| 35. Summit | VOL | $2M | FY 82 (1st qr) | I,N | Note - settleme with the State of Oh |
| 36. Region VIII Spill | Cost Recovery | $100K | FY 82 | None | |

Sub-total for FY 82
Clean up: $44.7 Million (Note - Summit not included)
Cost Recovery: 2.6 Million - Federal

| | | | | |
|---|---|---|---|---|
| 37. Seymour | C.D. | 11.2M | FY 83 (1st qr) | I,N |
| 38. Gratiot County | C.D.<br>cost recovery:<br>Federal<br>State | 24.5M<br><br>500K<br>13.5M | FY 83 (1st qr) | I,N |
| 39. Solvents Recovery | C.D. | $800K | FY 83 (1st qr) | N |
| 40. Olin-Triana | C.D. | $24M +* | FY 83 (2nd qr) | I Note - Federal Facility |
| 41. Olney, IL. | C.D.<br>Cost recovery<br>Fed<br>State | $1.4M<br><br>$61K<br>$38K | 2/83 | None |
| 42. Frit Industries | A.O.(consent) | $100K + | 2/83 | I, N |

Subtotal - FY83 to date Cleanup: $ 62.0 Million
Cost Recovery: .6 Million (Fed.)

Total Cost Recovery: $3.2 Million

* $24M for 3rd party compensation; no estimate yet on cost of site cleanup.

Mr. ANDREWS. Let me ask you just in layman's terms, which one of those lawsuits that have been settled which do not have sufficient teeth, in your opinion where if the EPA or the Justice Department needs to go back into the case are their hands tied because of the lack of any enforcement provisions in the settlement?

Mr. PERRY. Well, of course I don't have the names here but the last two voluntary cost recovery, agreements that have not gone through the court-approved process. So those two would require us to file a lawsuit upon the contract being violated.

Mr. ANDREWS. Let me ask you to turn to another area.

What was your involvement in the settlement of the Chem-Dyne case?

Mr. PERRY. First of all, had I known that Exxon Research was a party I would have recused myself. Let me tell you how that happened.

Mr. ANDREWS. The first question was what was your involvement?

Mr. PERRY. My involvement was that I signed off on the agreements in that case. We had 109 settling parties in that case. It was one of our first breakthrough cases where the agency for the first time used the tier structure. When I am saying tier structure let me explain what that means.

Mr. ANDREWS. Let me ask you to maybe expand on my question first of all.

Mr. PERRY. Surely.

Mr. ANDREWS. What was your personal involvement in that settlement, not the nature of the settlement?

Mr. PERRY. I signed off on those agreements on 109 companies. I signed off on them and sent them on to Mrs. Dinkins who also signed off on them.

Mr. ANDREWS. What does that mean that you signed off on them?

Mr. PERRY. That means that I am the one that approved them along with our regional counsel and the case attorney, I was not the only one from EPA on there. I signed off on each agreement. There were 109 of them and I signed off on those.

Mr. ANDREWS. Does that mean you authorized the settlement?

Mr. PERRY. That is correct from the EPA standpoint. But let me explain now because I think I must for the record. The two tiers that we had with the 109 companies worked like this. We had 42 companies in the first tier. The first tier dealt with the second tier and at the time of the negotiation I would have no knowledge of what was being negotiated. We had Mr. David Graham of the Velsicol Co. who was elected to represent the first tier of 42 companies. They were the major generators. They conveyed 80 percent of the hazardous waste to the site.

The second tier which Exxon fell into was part of the second tier that was negotiated by Mr. Graham of the Velsicol Co., So we did not know the nature of the second tier negotiation because the first tier negotiated with the second tier.

Mr. ANDREWS. Let me back up and let me ask just in a more basic way. Did you work for one of those parties that settled that lawsuit?

Mr. PERRY. No, sir. That was a subsidiary of the Exxon Corp.

Mr. ANDREWS. Did you find yourself in a conflict of interest because of that lawsuit?

Mr. PERRY. Only after the fact and it is just an appearance problem. It is not necessarily a conflict because I did not negotiate with Exxon at all in that matter. It was negotiated by the first tier group that was headed by Mr. David Graham. The first tier negotiated with the second tier and we did not get involved in those negotiations at all.

What happened is when all the agreements came up to be signed there were 109, both the first and second tier and I mistakenly signed off but the minute we saw Exxon was involved I gave it to the enforcement counsel. I told him to review that matter and for him to reexecute that agreement. I did not execute the final agreement in that matter.

The minute we saw it we took it out of the stack. I gave it to the Enforcement Counsel. He reviewed it and then he reexecuted the agreement.

Mr. ANDREWS. Well, how do you know what you are approving in cases like that?

Mr. PERRY. Because we had the first tier of 42 companies that constituted 85 percent of the settlement. These were smaller generators that constituted second tier. So we did not know. All we knew was that the first tier said we have 109 companies signed up. We can get you immediate surface cleanup. We did not release them from the underground surface cleanup in the Chem-Dyne case. That lawsuit is going on right now.

But I did not know, nor did I negotiate directly with or anyone in our office negotiate with the second tier. That was done by the first tier.

Mr. ANDREWS. It is hard for me to believe that you would sign on to the settlement of a major lawsuit without appreciating all the parties that were involved in that lawsuit in what may be some conflict of interest on your part in that settlement.

Mr. PERRY. I have taken action to ensure that that will never happen again.

Mr. ANDREWS. Thank you, Mr. Chairman.

Mr. SUNDQUIST. Would the gentleman yield for one question.

You had no knowledge of who the second tier people were, Mr. Perry? You did not see a list?

Mr. PERRY. There is a list, yes, sir, and I think that is how we caught the Exxon Research and Engineering name when we saw the full list. Then it was called to my attention that in the second tier——

Mr. SUNDQUIST. When you signed off on it you did not have that list?

Mr. PERRY. No, sir, because they lined all the 109 agreements up on my desk and I did not see the complete list at that time.

Mr. SUNDQUIST. How can you sign off on something if you do not see a complete list?

Mr. PERRY. It just was not available when I signed off on those agreements.

Mr. SUNDQUIST. Is that good legal practice?

Mr. PERRY. Well, I would have to agree it probably is not to answer your question.

Mr. SUNDQUIST. And you had no knowledge during that whole discussion or during the whole period of signoff that Exxon was part of the settlement?

Mr. PERRY. Not when I was signing that agreement, no, sir.

Mr. SUNDQUIST. When was the first time you learned of it?

Mr. PERRY. I think the ink was not dry on the document.

Mr. SUNDQUIST. Then you said that one of your assistants reexecuted the agreement. What do you mean by that?

Mr. PERRY. He said, Bob, that is Exxon Research and Engineering and I said take me off of it and I want you to review it.

Mr. SUNDQUIST. What do you mean he reviewed it?

Mr. PERRY. That means he reviewed it and reexecuted it.

Mr. SUNDQUIST. Does that mean that he just signed it instead of you?

Mr. PERRY. After he reviewed it, yes, sir.

Mr. SUNDQUIST. How long did it take him to review it?

Mr. PERRY. I really don't know. I am sure he read it through but you must remember that the deal was made by the first tier group with the second tier group and it was just submitted to us to validate what the first tier group negotiated with the second tier group.

I know it sounds complex but—

Mr. SUNDQUIST. I understand that precisely and I think the gentleman from Texas understands that, too. The only question we have is why would you sign off on something when you did not know everything that was involved?

Mr. PERRY. Well, all the agreements were the same in nature. It was just the amount of money that each contributed was different. This was a cashout type of situation.

Mr. SUNDQUIST. Thank you.

Mr. LEVITAS. Thank you very much.

Congressman Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

Mr. Perry, as you know the subcommittee's subpena sought duplicates of documents as well as the original and during the full committee's hearings on the shredders which we had on February 15 of this year when you and Mr. Daniel appeared, Mr. Daniel noted the following:

> This complete set of documents are the tentatively identified enforcement-sensitive documents including all the nonidentical duplicates were sent to the Office of Program Enforcement of the Solid Waste and Emergency Response Office and to the Office of Legal and Enforcement Counsel on December 14, 1982 where they have since been under lock and key with limited access.

Now, Mr. Perry, first would you explain for the record what you understand nonidentical duplicates to mean?

Mr. PERRY. Those would be duplicates that would probably have marginal notes or some other writing on it that would probably not be an identical duplicate.

Mr. ROWLAND. Why are those documents Mr. Daniels mentioned sent to your office, Mr. Perry?

Mr. PERRY. If they are being reviewed as enforcement-sensitive that would come within our jurisdiction to do that, sir.

Mr. ROWLAND. Are those documents still there?

Mr. PERRY. I will have to confer with Mr. Mays to find out. Yes, sir, they are.

Mr. ROWLAND. Still there?

Mr. PERRY. Yes, sir.

Mr. ROWLAND. Who had access to those documents since they have been in your custody? Who has access to those?

Mr. PERRY. It would be my immediate staff: the enforcement counsel and Mr. Mays and our enforcement staff.

Mr. ROWLAND. Did Mr. Michael Brown have access to those documents?

Mr. PERRY. Yes, sir.

Mr. ROWLAND. While they were in your office were the documents locked up in a safe or locked up in files or were they just put in the room?

Mr. PERRY. When they are not being utilized, they are locked up in a safe in Mr. Mays' office and I now have a separate locked room in my immediate suite where those documents are kept.

Mr. ROWLAND. Do I understand now that there are at least three complete sets of these tentatively identified enforcement-sensitive documents; one set that was delivered to you at your request and the originals that are still retained by Mr. Lucero's office?

Mr. PERRY. That is probably correct.

Mr. ROWLAND. Did you ask that the notes and buck slips and handwritten notes and things of this nature be included as enforcement-sensitive?

Mr. PERRY. If they met the enforcement-sensitive criteria, that is correct. If they had something to do with the strategy of the case or confidential informant disclosure or bottom line settlement figures, yes, sir; that would be part of an enforcement-sensitive document.

Mr. ROWLAND. And then they would be retained with those documents?

Mr. PERRY. That is correct. Otherwise this is a distinction between the nonidentical duplicate. If they had that additional information then it would be a non-identical duplicate.

Mr. ROWLAND. Were there many of these type notes and so forth with the documents? Were there very many of them, do you know generally speaking?

Mr. PERRY. I really don't know, generally speaking. There are probably a few. I don't recall.

Mr. ROWLAND. Did anyone in your office, the Office of Legal and Enforcement Counsel, have this last December or do they now have access to the files in the Superfund enforcement-sensitive material that is in the attention of Mr. Lucero's office without clearance from Mr. Lucero?

Mr. PERRY. I can't speak for Mr. Lucero. If he is applying our instructions only a very limited number of personnel are authorized to have access to those documents.

Mr. ROWLAND. How about Mr. Michael Brown; does he have access to Mr. Lucero's files?

Mr. PERRY. Yes, sir, from the standpoint of conducting enforcement; an enforcement case he would.

Mr. ROWLAND. With unrestricted access?

Mr. PERRY. Well, I am not sure. Yes, sir, he would still have to sign the log and go through all the procedures. If it relates to our litigation or enforcement action, I am sure Mr. Brown could probably see what he wanted to see.

Mr. **Rowland**. Have you ever had unrestricted access to Mr. Lucero's files at any time?

Mr. **Perry**. No; I have never gone down to his file room and gone through it. Usually by the time I get involved it is usually brought to me on the way to the Department of Justice.

Mr. **Rowland**. Thank you, Mr. Chairman.

Mr. **Levitas**. Thank you very much, Dr. Rowland.

Congressman Mineta?

Mr. **Mineta**. Thank you very much, Mr. Chairman, and I, again, appreciate your allowing me to be part of the hearings.

Mr. Perry, you said that in late March 1982 you became the associate administrator and general counsel; is that correct?

Mr. **Perry**. I was previously the general counsel. I was given the added responsibilities of associate administrator for the Office of Legal and Enforcement Counsel at that time, which added enforcement responsibility.

Mr. **Mineta**. Then what was the organization before you took on this job?

Mr. **Perry**. Before I took it on it was more or less a separate shop. One of the things that the administrator wanted to do was get us in a unified position where our general counsel lawyers and enforcement lawyers could work in one coordinated entity so that we could speak with one voice, one legal voice.

And more importantly to also include the regional counsel and regional lawyers in our office. It was a pretty massive undertaking to get our ten regional counsel offices, our enforcement law shop and our general counsel shop all organized into one unified structure.

And it has really paid big dividends because we have been able to generate a lot of good sustainable cases.

Mr. **Mineta**. Does not it present sort of a conflict of interest there within the shop to be regulatory on one side in terms of enforcement and also to be general counsel giving legal advice?

Mr. **Perry**. We have kept the general counsel's side separate because of that very point. They are regulatory lawyers and they do our defense when our regulations are attacked but, on the other side of the coin, our lawyers are finding our new structure very accommodating and getting a lot of incentive because we are not channelizing our talent.

When we can put a lawyer from our general counsel's office who knows that regulation thoroughly and who helped put it together and put him on the enforcement side, I can guarantee you we have a pretty capable enforcement staff because they are going to know that regulation upside down.

I have found that this is really helping out in the regions because our regional offices are organized along the same structure. Before we had this new organization each regional office had a separate regional counsel staff and a separate enforcement staff. It was a duplication of resources.

We had the enforcement side going one way. We had the general counsel side going another way. Now I can say very confidently that we are speaking with one legal voice and we don't have the turf fighting. We don't have the inconsistencies that we have experienced when the organizational structures were separate.

Mr. MINETA. But at some point in the past there were two complete, separate offices?

Mr. PERRY. Oh, yes, sir. That is absolutely right.

Mr. MINETA. You think that right now the legal counsel you have provided to the administration has been clear-cut, concise, all-knowing in one direction given the problems of the agency?

Mr. PERRY. It has been a real tough challenge; it really has and I hope we are doing a good job but it has been a very tough challenge. I think once we have enough experience and enough time to perform we can show you that we can do a real good job.

I think the administrator is satisfied with the advice and counsel that she has been getting.

Mr. MINETA. In an earlier question you said something about you were very proud of the great record of enforcement that you have in your shop.

Mr. PERRY. Yes, sir. From the time that I came on board and we got our task force report which I would like to submit to the committee because it gives you the history of what we had to do to come up with the structure we finally approved. And when we got this in place our case numbers just went way up. 170 cases in a 6-month period is phenomenal. You multiply that by another 6 months and we are up to record heights for the full year. I was very proud of that.

Mr. MINETA. And the nature of the settlements in those cases?

Mr. PERRY. They are very good, they are some of the ones I mentioned. For the first time we had the tier structure developed like in Chem-Dyne; we had Seymour and the Velsicol case and we had $150 million in those 43 other settlements and I am very proud of that.

Those are things that really don't come out when we are attacked by the press and the other people that are alleging we are not doing a good job. But the record will show that we are. Also what you might want to do is talk to the lawyers over at the Department of Justice. They are our litigating lawyers and they are very pleased with the way we are sending them cases.

It used to take us about 119 days to review a case at headquarters. I have got it down now to a 64-day turnaround and our return rate on these cases has gone down. Our last 60-day report was zero on DOJ returning cases to us back to EPA. They have been very pleased with our people.

Mr. MINETA. At what point were you into the discussion with the White House about the possibility of invoking executive privilege?

Mr. PERRY. I never played a role in the President issuing his order of November 30. That was done without my presence.

Mr. MINETA. When was the first time you knew of the White House taking that course of action?

Mr. PERRY. It was right around that date. Of course the lawyers at Justice warned us that it was coming.

Mr. MINETA. When was that?

Mr. PERRY. It was probably a few weeks before but I just do not recall the exact dates.

Mr. MINETA. Five weeks, six weeks?

Mr. PERRY. Possibly. But exactly how the President got involved I just was not privy; I did not have any knowledge of that.

Mr. MINETA. Do you know when he signed the memorandum?

Mr. PERRY. On November 30, is my understanding.

Mr. MINETA. Do you know when he personally signed it?

Mr. PERRY. I am sure he did, but I don't have any direct knowledge of it, but I am sure he did.

Mr. MINETA. Mr. Perry, Ms. Lavelle has testified here before this subcommittee and before a committee of the Senate that the Superfund Program policy was to negotiate first and to litigate second, and that this policy was set by Mrs. Gorsuch-Burford. Do you concur with her assessment and/or characterization of the Superfund Program policy?

Mr. PERRY. Sir, in all practicality you must say that we should attempt to negotiate the case but there comes a point in time where you must show the regulated community that negotiations will cease and we are capable of enforcing in a court of law. When Mrs. Burford was making that statement she was making it in the light of, let's be reasonable. If we can negotiate, fine, but let's also make it clear that we are capable and competent enough to file a lawsuit when the time becomes necessary.

And that is what resulted in our Quantico accords that we entered into with the Justice Department because the issue always presents itself. When does negotiation stop and litigation begin. That is what the task force in the Quantico accords made clear because we have made clear by an agreement with the Department of Justice and the EPA that during negotiations litigation preparation will begin and continue.

In other words, we will not negotiate and wait before we start preparing for a lawsuit. We will prepare for a lawsuit right at the case development stage. Negotiations, if negotiations are going to go forward, fine. But at the same time the Quantico accords and indeed the policy that we are now promulgating from our headquarters made clear that litigation preparation will go on simultaneously with negotiations so that the minute it appears that the parties are not negotiating in good faith or that it appears that the Government is not getting a good deal, we will be prepared quickly and competently to file an action in Federal district court.

And that is where Ms. Lavelle and I had a little bit of a different philosophy. Ms. Lavelle was not a lawyer and she wanted to go the settlement mode more than the litigation mode because she was always hoping, and with some merit, that by settling cases you can get things accomplished more quickly. By going litigation, it takes more time.

But how we drew the line was that we will go court-approved consent decree because that cures both ills. That got a court decree with teeth and at the same time got the parties to clean up. And that was what we were looking toward as our goal. We got the cleanup. We got the court decree.

If the companies that were subject to the consent action did not do what the contract said we could automatically move into Federal district court and get a contempt action very quickly. And when that is behind a settlement I can assure that the parties to that settlement will not renege and the American people will get the cleanup the agreement says they are going to get.

Mr. **Mineta**. Were you counseling Mrs. Gorsuch at the time that this committee was attempting to get documents from EPA?

Mr. **Perry**. Yes, sir, I was.

Mr. **Mineta**. Were you counseling her to stonewall the committee and then negotiate later?

Mr. **Perry**. No, absolutely not. You will never know the anxieties and problems that we all went through in having to make these very, very tough decisions on withholding of documents from the Congress. It is a very difficult matter.

The legal principle, I think, the constitutional principle is a valid one but I also think that we have to look at the practicalities. We have to look at the realities and when a principle reaches a point that the very objective of the enforcement effort is starting to sink, then I think we have to relook at the principle.

Mr. **Mineta**. Had you counseled her that she ought to be as forthcoming as possible with this committee?

Mr. **Perry**. Yes, sir; I have and Mrs. Burford also has, as an official of this administration a primary responsibility to the President of the United States and Mrs. Gorsuch, being a good soldier, will obey the orders of the President to the very end.

Mr. **Mineta**. Mr. Perry, you are a loyal person, are you not?

Mr. **Perry**. I hope so, sir.

Mr. **Mineta**. Are you familiar with Public Law 96-510, Public Law 96-510?

Mr. **Perry**. If you could give me some subject matter of it, I hope I am familiar with it.

Mr. **Mineta**. Is that not the public law that established the Superfund legislation?

Mr. **Perry**. Yes, sir, I am familiar with that.

Mr. **Mineta**. And is that the law of the land?

Mr. **Perry**. It is.

Mr. **Mineta**. Don't you think you are being more loyal to people at EPA than you are to the law of the land?

Mr. **Perry**. The law of the land and the Constitution also requires you as officials of the administration to obey the Chief Executive, who is the President of the United States. If we did not, then we will either resign or be fired and it puts one in a very uneasy position because we do realize the responsibilities of this Congress. I think that the Chairman, in his negotiations with the President, has come to adjust the resolution and I am hoping that this very serious matter is resolved and that we can satisfy your legitimate needs by providing access to these documents so you can get on with your investigation and do the job that I am sure that you feel must be done.

Mr. **Mineta**. And yet has that not taken away from your enforcement responsibilities of the law as well?

Mr. **Perry**. It has diverted our resources and any principle that one is fighting for, you have got to assert resources and this is costing us dearly. But again the decision is that of the President of the United States and we support it and we must be loyal to his order and we are going to do it.

But like any battle it is extremely difficult and I hope we are not losing the battle by the resources and the effort and——

Mr. MINETA. Seems to me that both in public opinion and the courts you are losing, you are stonewalling—or had been—until the efforts of Mr. Molinari and Mr. Levitas in pursuing in a very conscientious way to this point. Now everyone says well, we have been counseling everybody that we ought to be forthcoming with the Congress. Yet that was not our experience, starting back in March of last year all the way through until December 16, which, was the date when the contempt citation was voted on by the Congress.

It just seems to me that we have lost a great deal of time, you had to expend resources that could have been more productively spent somewhere else; we have done the same thing on this side—for what?

Mr. PERRY. For the constitutional principle that the President is asserting. That must be a very valuable one with what we are all expending, for energy.

Mr. MINETA. Only it seems to me the constitutional privilege or the ruling in the Nixon case—I am not an attorney—but as I recall in the Nixon case on executive privilege I believe that the court ruled that the President must be personally familiar with the case. I believe those were the words, "personally familiar", were used in the Supreme Court ruling at that time.

Yet we have had testimony here that says the President was not personally familiar with the circumstances of this instance where he was invoking executive privilege.

Mr. PERRY. Sir, I think he was given a briefing but again I was not there and I don't know the degree of his familiarity.

Mr. MINETA. I am not sure he even signed the memorandum because he was not in the country on November 30.

Mr. PERRY. I see.

Mr. MINETA. He was on his trip into South America.

Mr. Perry, when Ms. Lavelle testified before this subcommittee on February 24, of this year she stated that she knew that there were ways for Congress to review sensitive materials. We all know that very sensitive material is reviewed on a regular basis by many of us including myself serving on the Intelligence Committee. We see some of the most sensitive documents that this Government has. We see sensitive documents on ongoing FBI cases, and other Justice Department cases.

In fact, Ms. Lavelle claimed that she felt there was a way for this subcommittee to see what it wanted but that quote, "The entire affair of how it was handled with Congress was taken out of my hands. That was totally orchestrated by Mr. Perry."

The decision to deny this subcommittee access to the EPA's enforcement files was made quote "by Mr. Perry and by the Administrator", end of quote.

Would you care to comment on this?

Mr. PERRY. Sir, the President of the United States issued that directive. I think Ms. Lavelle is giving me more responsibility than is there. It was the President's order. That order was issued in the spirit of safeguarding these enforcement-sensitive documents so that cases would not be put in jeopardy. It had nothing to do with the credibility of this committee. It was the constitutional prerogative of the President who is charged to see that all the laws are faithfully executed that he issued that order. It goes to the ultimate control of the documents and I think the problem has now been remedied by the fact that the access to those documents has been given to this committee and I think the agreement itself shows that the President has the confidence in this committee that you indeed deserve.

Mr. MOLINARI. Will the gentleman yield?

Mr. MINETA. I will be pleased to yield to my colleague from New York.

Mr. MOLINARI. Mr. Perry, by the line of questioning pursued by Mr. Mineta one would believe or be led to believe that indeed it was the President of the United States that prevented us from getting the so-called enforcement-sensitive documents. Is that the impression you are trying to convey?

Mr. PERRY. The decision is the President's. It is his prerogative and we must obey it and that is his prerogative of office, yes, sir.

Mr. MOLINARI. Then let's go back.

Was it the President of the United States that stopped this committee from its investigation when the staff, counsel to this subcommittee went to region II in New York and were told there would no longer by any access. Was that the President's decision 5 months before executive privilege was invoked?

Mr. PERRY. At the time that this was commencing the President's prerogative could not be jeopardized so we could say that that was the beginning of the exercise of the President's——

Mr. MOLINARI. You are not answering my question, Mr. Perry. I want to know whether the President knew or had any role in stopping us from having access at region II. That is where the problem started and in region II we had full access to the documents. Documents were being examined, there was a good spirit of cooperation, and suddenly Mr. Prolman and members of the staff were told, "We have orders not to give you any more documents." That order came from Washington.

Now my question is, did the President have a hand in that?

Mr. PERRY. Personally he probably did not but his authority——

Mr. MOLINARI. I am not concerned about his authority. I want to get the role of the President on the record. You keep reciting the President of the United States and nodding your head at the same time.

And you know I want to find out just what his role was because this investigation was started by myself.

Mr. PERRY. Yes, sir.

Mr. MOLINARI. It bothers me deeply that we were stonewalled. When I hear about how we may be responsible for delaying the real job of EPA because of the file examination and that kind of nonsense, I get very upset. Let's try to get the picture as to who was responsible for what.

I hope the gentleman will yield further. What hand did the President have in the original decision to stop our counsel at region II from pursuing the investigation?

Mr. PERRY. You must remember that being part of the executive we are all agents, ultimately of the President.

Mr. Molinari. Do you speak for the President, is that what you are saying?

Mr. Perry. I am not authorized to invoke executive privilege, only the head of a department can do that. But I am an agent of a head of a department and, therefore, I have a responsibility not to jeopardize the President's ultimate decisionmaking. And that is the condition that we found ourselves at the very early stage.

Mr. Molinari. Wait a minute.

Mr. Perry. And had we opened all the files and released all these enforcement-sensitive documents at an early stage, we would ultimately have prevented the President from issuing his order of November 30, because all the documents would have been gone.

Mr. Molinari. I cannot seem to get a direct answer from you, Mr. Perry. I am not interested in your preservation of the authority of the President. I am interested in what role the President had in stopping staff from continuing their investigation of the files at region II.

Was he consulted? Did he know about it? Did he tell you that he wanted the investigation stopped at that point?

Mr. Perry. No, sir, he certainly did not.

Mr. Molinari. OK. Thereafter, when we had the impasse, Mr. Levitas, myself, Mr. Hagedorn and Dr. Hernandez, had a meeting and it was agreed at that meeting that we would again have complete access.

About 4 or 5 days later there was another reversal and we were told we could not have access. Was the President involved in that decision in any way?

Mr. Perry. I have no direct personal knowledge of that. I would suspect he did not but his staff did and his agents did. I know the Department of Justice did.

Mr. Molinari. Let's try to shed a little light on that then.

You know that Justice did. I am very interested, frankly, in how the President invoked executive privilege. Would you mind telling us what you know about that historic event?

Mr. Perry. Yes, sir. I think it started when Mr. Bob Prolman went out to region II; went into our region II office and asked to have complete access to the file. Our procedure of course is that our cases be held to a point where a release of any type of information that could jeopardize our case is held in confidence so that if that material got out to the opposite party we could be—we could have assurance——

Mr. Molinari. Were you aware that we had complete access prior to that point in time, total access to any file?

Mr. Perry. The fact you may have had total access at one particular time should not impede the Chief Executive from exercising his prerogative.

Mr. Molinari. Were you aware? Was anybody to your knowledge at EPA aware of the fact that our subcommittee had total access to the files at region II?

Mr. Perry. I was not personally aware of that.

Mr. Mineta. Would the gentleman yield, if I might reclaim my time for 1 minute.

Mr. Molinari. Sure, go ahead.

Mr. **Mineta**. Just to refresh Mr. Perry's knowledge of Public Law 96–510 which is the legislation, under section 104 it says, "Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President—or any representative of the President—under this Act shall be made available upon written request of any duly authorized committee of the Congress to such committee."

I yield back whatever time is necessary to my colleague from New York.

Mr. **Molinari**. Thank you.

Mr. Perry, let's define the role of the President at the time executive privilege was invoked. I am referring now to the time the President authored a letter to Mrs. Burford directing her not to release any documents to this subcommittee. Who counseled the President to make that determination?

Mr. **Perry**. His counsel is Mr. Fred Fielding at the White House and, of course, the Attorney General of the United States.

Mr. **Molinari**. I know who his counsel is, I know who the actors are. To your knowledge, who were the parties responsible for having the President invoke executive privilege?

Mr. **Perry**. I don't have any direct personal knowledge who advised him when he signed the document going to Mrs. Gorsuch directing her to withhold enforcement sensitive documents. I do not, no.

Mr. **Molinari**. Do you mean to tell me you never had any conversation with Mrs. Burford or any other officials in your office when this event took place? You have no knowledge of how the President became involved in invoking executive privilege?

Mr. **Levitas**. Before you answer that question, Mr. Perry, let me say this; it is a totally incredible response for you to suggest that you don't know or have any information or knowledge about how the President was counseled to make that decision. You are suggesting that that document sort of appeared at EPA much to your amazement and surprise without having heard in advance or subsequently who was involved in counseling the President.

That is what Mr. Molinari is asking.

Mr. **Perry**. I don't know who personally was there at the time he signed it, but I can give you some pretty good speculation as to how it occurred from the conversations that took place afterwards or surrounded the event, but I don't know who was sitting in the room when he signed the document. That is what I am referring to.

Mr. **Levitas**. What Mr. Molinari is attempting to get is information from you based upon your proximity to this whole matter. You know, it wasn't Mr. Prolman who triggered this thing back in September; it was you who triggered this thing really on September 15.

You were the one who generated the first decision of closing the files so far as the testimony before our committee has developed. I think that is pretty clear; isn't that correct?

Mr. **Perry**. Together with the advice of the Department of Justice.

Mr. **Levitas**. Now, I think you made the decision and then called the Department of Justice and asked them for participation?

Mr. **Perry**. No; I always stay in counsel with them, Mr. Levitas, and I would not do that without their advice and counsel.

Mr. **Levitas**. You got a phone call from somebody in region II or somebody back here at headquarters that Prolman and his crowd are in region II looking through these files; somebody made a decision. Was it you?

Mr. **Perry**. Yes; but I did confer with the Justice Department on that.

Mr. **Levitas**. Before that decision was made?

Mr. **Perry**. Oh, yes.

Mr. **Levitas**. You discussed it with Mr. Olson?

Mr. **Perry**. It was probably Mr. Ramsey and—I don't recall whether Mr. Olson was involved at that time.

Mr. **Levitas**. What about Mr. Simms?

Mr. **Perry**. Possibly, but I am just not absolutely sure.

Mr. **Levitas**. All right. Well——

Mr. **Perry**. It is quite possible.

Mr. **Levitas**. On the theory of joint and several liability, with which you are familiar, you were involved in that decision on September 15?

Mr. **Perry**. That is correct.

Mr. **Levitas**. Which began a series of events that brought us here to do with a lot of fallout along the way.

What Mr. Molinari is trying to establish is, where did the President get involved along the way? And upon whose counsel?

Now, you were involved in this. There is no doubt in my mind that you discussed this matter with officials, high officials at the Justice Department.

Did you ever discuss it with Mr. Smith?

Mr. **Perry**. No.

Mr. **Levitas**. Attorney General Smith?

Mr. **Perry**. No, sir.

Mr. **Levitas**. With Mr. Olson?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. With Mr. Schmults?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. With Mr. Hauser?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. With Mr. Fielding?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. With Mr. Jim Baker?

Mr. **Perry**. No; not Mr. Baker.

Mr. **Levitas**. Now, would you tell us, based upon your involvement with this thing, who advised the President concerning this matter and when that advice was given for the first time so far as you know?

Mr. **Perry**. I am sure the Department of Justice played a very major role and that would come out of the Office of Legal Counsel——

Mr. **Levitas**. Mr. Olson?

Mr. **Perry**. Mr. Olson, with Mr. Simms; and also the Land and Natural Resources Division, and that would be Mrs. Dinkins and Mr. Steve Ramsey, and then you go down to the bottom of the totem pole and it would be myself and my staff.

That would be about the chain of command.

Mr. **Levitas**. Now, who in the White House did you discuss this matter with prior to the President or someone on behalf of the President or some signature on behalf of the President signing that November 30 memorandum?

Mr. **Perry**. I don't recall the precise date, but I more than likely discussed it with Mr. Hauser.

Mr. **Levitas**. Have you heard who discussed the matter with the President?

Mr. **Perry**. Yes, sir; I believe the Attorney General and Fielding and perhaps Mr. Olson, I don't know—I don't think he was present in the White House.

Mr. **Levitas**. What about Mr. Baker?

Mr. **Perry**. I really don't know, sir.

Mr. **Levitas**. Mr. Meese?

Mr. **Perry**. No, sir. I do not know.

Mr. **Levitas**. You have not heard anything?

Mr. **Perry**. No, sir. I have not.

Mr. **Levitas**. I would like to go to another subject, if I may.

Mr. **Molinari**. I am using Mr. Mineta's time. I would yield back to Mr. Mineta.

Mr. **Mineta**. On the September 14, 1982, our staff is told, yes, it is OK to come up to region II to see the documents. The person goes up to New York on September 15 and at that point is refused permission to see the documents. Is that correct?

Mr. **Perry**. That is basically correct, Mr. Mineta. He was not given a refusal to see all the documents. It was just the limited enforcement sensitive documents, Mr. Mineta.

Mr. **Mineta**. At that point, no one knew what the enforcement sensitive documents were, Mr. Perry, did they? He was denied access to all enforcement files; is this correct?

Mr. **Perry**. Mr. Mays, who had a direct involvement in that has informed me that that is not correct. Mr. Prolman could have access to those files that were not enforcement sensitive.

Mr. **Mineta**. He had the ability to see engineering and technical studies.

Mr. **Perry**. That is correct.

Mr. **Mineta**. But none of the enforcement files?

Mr. **Perry**. None of the enforcement sensitive files.

Mr. **Mineta**. Had there been a definition at that point as to what was enforcement sensitive?

Mr. **Perry**. You are hitting a very—the very, I think, the nub of the problem. We had not. But that was——

Mr. **Mineta**. That is right. So you refused access to any of the files at that point other than the engineering and technical studies.

Mr. **Perry**. Those that may be enforcement sensitive were channeled away from his view because we had to review them to see if they met the criteria of enforcement sensitive and at that time it might have been a little wider than it is now because we were just getting familiar with the enforcement sensitive items in that file.

Mr. **Mineta**. Thank you very much.

Mr. **Levitas**. If my colleague would yield just at that point. It is my recollection of your previous testimony, Mr. Perry, that since you didn't know what was enforcement sensitive at that time either in terms of the concept or in terms of the specific documents, that you have testified that you closed all of the files, all of the enforcement files to our committee in order to let you make the determination of what was sensitive and what was not sensitive. Isn't that correct?

Mr. PERRY. Mr. Levitas, I was not there, but probably all the enforcement sensitive files which was the scope—which was probably wide at that time. Could I have Mr. Richard Mays answer that question because he was present at the time?

Mr. LEVITAS. Certainly, we will let Mr. Mays respond, but I would like to make this observation to you while Mr. Mays is pulling that microphone toward him.

In our prior discussion of this very matter on February 15 of this year, February 16 of this year, and we were going through this same question, you acknowledged or stated that all of the files, even all of the enforcement files, were not closed to the subcommittee.

It was only those sensitive, enforcement sensitive documents that were being closed to the committee.

But you didn't know what were the enforcement sensitive documents at that time. So, therefore, the entire enforcement file was closed including documents which were not sensitive.

Now, I——

Mr. PERRY. I am not sure how the region had their files categorized and Mr. Mays can probably respond to that.

Mr. LEVITAS. Mr. Mays.

Mr. MINETA. Mr. Chairman, is Mr. Mays sworn somewhere?

Mr. LEVITAS. Yes.

Mr. MAYS. When the original request was made by Mr. Prolman in September 1982, the concept of enforcement sensitive, as we know it today, did not exist.

We had been dealing, however, with the problem of what to release in response to requests under the Freedom of Information Act.

We had taken the position at that time that we wanted very zealously to guard the names of potentially responsible parties from being released for obvious reasons.

We didn't want to jeopardize an enforcement case. We didn't want to point an accusing finger at a party who might on gathering further evidence, might not be a responsible party after all.

So when Mr. Prolman called, it was sort of a red flag that was waved because we had not established a firm policy or had never actually faced the problem that I knew of with regard to what to release to congressional subcommittees.

The answer that I recall having given to Mr. Prolman was—or at least the instructions that I gave to the regional counsel attorney with whom I talked—was that Mr. Prolman should be given access to all the data regarding the site such as the geological, hydrological data with regard to the site, the chemicals that were found on there, the concentrations that might exist with regard to the chemicals, and all other information except names of responsible parties, enforcement strategy and things of that nature.

Mr. Prolman, at that point, as I recall—the report I got from the regional counsel's office and, in fact, I talked with Mr. Prolman on the phone when he was in New York—was that he was not interested in going through the files if he could not see the other information which he was also interested in.

So at that point, as I recall, he came back to Washington from New York and then he called me and I told him we were trying to address the problem and would attempt to have a firm answer with regard to our position as soon as possible.

Mr. LEVITAS. Mr. Mineta, would you like to proceed?

Mr. MINETA. Well, I am just not sure that we are getting the answers to the question.

I have no further questions, Mr. Levitas.

Mr. Perry, thank you very much. I just very strongly believe that you are a loyal man, you are loyal to the hierarchy at EPA and not to the law of the land.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Mineta.

Let me pursue another subject and I will get back to that one eventually.

During the full committee's hearing on the shredders of February 15, you were asked the following question, "Have shredders been the only means of document disposal?"

I think Congressman Snyder, the ranking member of the full committee asked that question.

The question was being asked with disposal of enforcement documents, not just sensitive documents.

Your response was, "I have no independent knowledge of that."

What I would like to know is do you have any knowledge through any source as to that documents pertaining to the administration or enforcement of the Superfund Program were removed from the files, taken out, destroyed or sequestered by someone or anyone?

Mr. PERRY. I do not have any personal knowledge that those documents have been destroyed that you described.

Mr. LEVITAS. Any Superfund or enforcement documents?

Mr. PERRY. Not to my knowledge, Mr. Levitas.

Mr. LEVITAS. Have you been contacted by anyone in the Justice Department concerning the disposal of documents?

Mr. PERRY. Sir, I was just given some added information.

We had just a few days ago obtained knowledge that we might have lost two boxes of documents in the region V.

I don't know whether that has been conveyed to your committee.

Mr. LEVITAS. That is the first I have heard of it. Where is region V?

Mr. PERRY. That is in Chicago.

Mr. LEVITAS. Do you know what sites were included in those files?

Mr. PERRY. I think it was the Chem-Dyne files. In any big organization we are always continually getting surprises. This came to us the other day and when I said I had no knowledge of it, those two boxes are missing, and——

Mr. LEVITAS. Are there duplicates of those documents?

Mr. PERRY. I am not sure exactly what they are. Mr. Yamada is here who is handling it for me and I can ask him to describe it more fully to you if you would like.

Mr. LEVITAS. Yes. In fact, I was going to ask Mr. Yamada to come up in any event.

Mr. LEVITAS. We appreciate your being here, would you come forward and raise your right hand?

[Witness sworn.]

Mr. YAMADA. I do.

Mr. LEVITAS. Thank you.

Mr. Yamada, identify yourself by your position and if you could give us a little more information on the missing Chem-Dyne files, and if there are duplicates or whatever.

Mr. YAMADA. Gerald Yamada, deputy general counsel, EPA.

We were alerted within the last couple weeks, by the regional counsel in region 5 that in response to the subpoena issued by this committee, in addition to a discovery request in the Chem-Dyne case that in November six boxes of Chem-Dyne files were sent to be copied; that in late December or early January only four were returned.

Mr. LEVITAS. Where were they sent to?

Mr. YAMADA. I believe within the regional office for copying.

Mr. LEVITAS. Are duplicates available of the two boxes of missing files?

Mr. YAMADA. We don't know.

Mr. LEVITAS. Are you going to try to find out?

Mr. YAMADA. We have been attempting to find out what was in the boxes.

Mr. LEVITAS. OK. Let me get back to my question to Mr. Perry now.

Has anyone at the Justice Department ever spoken with you concerning the disposal of documents relating to the EPA Program?

Mr. PERRY. No, sir. To my knowledge I have never discussed disposal of documents with the Justice Department.

Mr. LEVITAS. What about the destruction of documents?

Mr. PERRY. No, sir, to the best of my knowledge I have not discussed that with the Justice Department.

Mr. LEVITAS. No one at the—has anyone at the Justice Department ever spoken to you with respect to the removal of documents from the Environmental Protection Agency.

Mr. PERRY. Yes, sir, we will send them copies of these enforcement-sensitive documents to be reviewed pursuant to the three-tiered structure that we have previously testified to before this committee on how an enforcement-sensitive document is ultimately determined and we will send those documents to the Department for their review to meet that criteria.

Mr. LEVITAS. Mr. Perry, were you in the offices of the Environmental Protection Agency at any time over the weekend of February 4 of this year?

Mr. PERRY. I would have to review my calendar. I am usually there on weekends.

Mr. LEVITAS. To give you a date, that was the weekend, that afternoon was, Friday afternoon, February 4, was the time that Ms. Lavelle was asked to resign and on the following Monday she was fired.

Mr. PERRY. I was ill on the Friday that Ms. Lavelle was dismissed by the administrator. I was not in the office that day.

Mr. **Levitas**. Were you in the office over that weekend?

Mr. **Perry**. I don't believe so. I was ill and I don't believe I was in the office that weekend. That was the weekend of February——

Mr. **Levitas**. Fifth and Sixth.

Mr. **Perry**. Fifth and Sixth, OK. No, sir, I am pretty sure I was not in there.

Mr. **Levitas**. Is that your current calendar, by the way?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. I have a copy of that but I would like to see the original.

Mr. **Perry**. We will give you the original. Would you like to see one now, Mr. Chairman?

Mr. **Levitas**. If you don't mind, I would like to see that.

Mr. **Perry**. Now, I have a photocopy of your calendar for that week and it says that you would leave for New York; question mark; canceled; meeting with Mrs. Gorsuch at AAS, ANG office 4 that afternoon Friday. It is your testimony you were not there?

Mr. **Perry**. No, sir; I was not there. I was ill that day. At the top it shows that I was out, I was out on the third and the fourth. I was ill on those two days.

Mr. **Levitas**. Is this document which I have now here—the one you just handed up to me—is it yours or is it your secretary's? It says Robert M. Perry at the top, 1983 TMP.

Mr. **Perry**. I am not sure which was mine and which was the secretary's, but they both should be pretty accurate, both sets. If you have TMP that is my secretary's initials, Mr. Chairman.

Mr. **Levitas**. Sometimes I notice when a meeting is not held you write canceled, at other times it appears to have been erased from the calendar. Is there any reason for erasing it sometimes and marking it canceled on other occasions?

Mr. **Perry**. I don't think there is any set rule on it. It is up to the secretary. Sometimes she will erase it because she might want to put something else in. But I don't think there is any set rule on it.

Mr. **Levitas**. I would just like to ask a couple other points and then I will recognize Mr. Molinari, who I know has a series of questions.

Ms. Lavelle testified rather extensively before the subcommittee concerning conflicts with you. She spoke of impasses that couldn't be resolved and she tried to see the Administrator to get these matters resolved and after 2 months never was able to get a meeting.

Apparently someone prepared some talking notes, you have heard of the infamous memorandum which appeared to be talking points that were prepared for Ms. Lavelle in which she claims credit for some of these settlements; Chem-Dyne, Seymour and accuses you of trying to steal her thunder when really you were trying to scuttle these matters.

I think it is very important for us to get from you some sense of what this relationship was, what these impasses were, just what was going on between you and Ms. Lavelle?

Mr. **Perry**. I think that Ms. Lavelle was trying to do a good job, Mr. Chairman; I really do and I can't sit here and really criticize her. I think if you look at the results, Ms. Lavelle tried.

Ms. Lavelle was not a lawyer and her experience for taking on these awesome responsibilities I think was somewhat limited. I have tried desperately to work with her and I am very sorry if I displeased her, but as a lawyer I felt that our first obligation was not just getting numbers and multi-settlements but our main objective was the good of the American people, not an agenda that didn't have any teeth in it.

Rita wanted a program that moved. She liked numbers. She wanted settlements.

I, on the other hand, wanted settlements but I wanted court approved consent decrees and Ms. Lavelle and I had a difference of opinion on going to court with these consent decrees because that type of court action took more time. In my view I don't think Ms. Lavelle was trying to get so-called sweetheart deals and things like that. I think she wanted to get her program moving along quickly and she perceived me as being a too technical lawyer and she would rather not have to put up with the delay of going to the courthouse and being that she was not a lawyer, she liked the perception of getting a job done. I was for getting it done all right but getting it done in a way that had teeth in it, and that through the years would be sustainable and that if something didn't go right in the cleanup that we could move rapidly in the courthouse and not be embarrassed with having a weak——

Mr. **Levitas**. Do you want to complete that?

Mr. **Perry**. No, sir.

Mr. **Levitas**. These talking points suggest that you tried to scuttle—you and your staff tried to scuttle negotiations with responsible parties at Chem-Dyne. Is that true?

Mr. **Perry**. At one time in the early stages. Chem-Dyne negotiations—now you must remember that the 109 parties that were divided up into two tiers, that was a cash agreement with those companies. They paid their cash and that was a voluntary agreement, Mr. Levitas. They paid the——

Mr. **Levitas**. I understand that.

Mr. **Perry**. $24 million for the surface cleanup. At the same time we filed a lawsuit against those 25 remaining companies that didn't settle and where we had a difference there, I kept telling Ms. Lavelle that I was not going to sit back and wait an unreasonable time before I was going to ask the Department of Justice to file that lawsuit on those nonsettling companies, and Ms. Lavelle—with some degree of concern—wanted to hold off until she could get more parties to settle.

I said, well, we have to reach a time where we have to either file the lawsuit and cut it, and we did have a little difference of opinion there. Because finally I said, all right, we have 109 companies; let's get them signed up; let's get the cash, and get the surface cleanup moving. But at the same time we are going to file the lawsuit against those companies who did not settle and we did it all the same day and ultimately she was very satisfied with it.

But we did have that little period in there where she didn't want me to move too rapidly to the courthouse.

Mr. **Levitas**. Did you and your staff attempt to scuttle the negotiations?

Mr. **Perry**. No, sir, not to scuttle the negotiations. The only thing is if I would have filed the lawsuit a little too early, Rita would have said she could have gotten that company to settle had I not sued.

Mr. **Levitas**. Did you claim credit for eventual settlement in Seymour and told Ms. Gorsuch and the White House that you would bring the deal in?

Mr. **Perry**. Absolutely not, Mr. Levitas.

Mr. **Levitas**. These are the points in this memorandum that have been testified to and we just need to clear this. For example, the memorandum notes that there was a meeting at the generator's request on Seymour held with you and Lavelle and attendees from certain companies; IBM, Western Electric, Cummins and CSR, and despite previous briefings, Perry took a hard line beyond previously agreed limits and nearly scuttled the negotiations.

Did that occur?

Mr. **Perry**. We had the meeting with the 24 companies and the companies did not want to go under a consent decree. They wanted a voluntary agreement and I did not want that. I felt we should have an enforceable consent decree approved by the court and I told them that very strongly.

Mr. **Levitas**. Elsewhere in this document it said that you wanted to hold up the 400-site, national priority list because you had not seen it. Is that true?

Mr. **Perry**. My staff had not had adequate time to review it and that was another point of contention between our two offices. For some reason or other, I was always getting things at the last minute and I asked the administrator to hold that up until my staff could properly review it to be sure that both 10-percent sites, 50-percent sites, were legally definable, and that the list was legally and properly put together.

And Rita got a little upset about that because to have it go through my office meant a little more delay.

Mr. **Levitas**. This document also says as I understand it, referring to you according to the testimony—helping to set Gorsuch up, the thing she needed to be protected were not there. No thinking; no planning, failed to get any DOJ signatures on contempt documents.

Do you know what that is all about?

Mr. **Perry**. Not entirely. I know that the administrator was concerned that we properly review these enforcement sensitive documents. Our office reviewed them, the Justice Department reviewed them. The White House reviewed them and the Administrator made that clear and I think Rita is voicing the Administrator's concern there.

Mr. **Levitas**. What are the signatures that you failed to get at DOJ?

Mr. **Perry**. Well, we didn't fail to get them, because when we sign off on the enforcement sensitive documents, myself and Mr. Brown on the EPA side, we next go to Justice and we have Mrs. Dinkins and a career lawyer sign off. I think that is it.

Mr. **Levitas**. I just wanted to get some idea on that.

Earlier today you testified that you were counseling Mrs. Gorsuch to be forthcoming and not to withhold documents; is that true?

**Mr. Perry.** Sir, we were hoping very sincerely, before this thing ever started, that we could negotiate something with you and with your subcommittee that could be acceptable. We always had that in the back of our minds; that we could avoid a major confrontation.

Mrs. Burford was very interested in avoiding the major confrontation and, indeed, the President in his order says, "Please work with the committee," and that is what we were trying to do.

**Mr. Levitas.** Mr. Perry, when did you and Mr. Yamada meet with Mr. Sanderson about the permit on the incinerator?

**Mr. Perry.** It was probably late January. I could find out exactly and supply that for you.

**Mr. Levitas.** January of what year?

**Mr. Perry.** This year, 1983. I don't think that would be on the calendar.

**Mr. Levitas.** Mr. Yamada, do you remember when this meeting occurred?

**Mr. Yamada.** Yes. It was in Mr. Perry's office.

It started late in the day. It was around 5 o'clock, and Mr. Perry, Mr. Sanderson and myself were there.

**Mr. Levitas.** How did you know about the meeting?

**Mr. Yamada.** Earlier in the day, Mr. Perry said that Mr. Sanderson had either contacted him or somehow he was informed that he was coming in to talk about ocean-dumping permits. I was asked to come in to give a briefing on that.

**Mr. Levitas.** Did you or anyone else at that meeting take any notes, Mr. Yamada?

**Mr. Yamada.** No. I did not take any notes at that meeting.

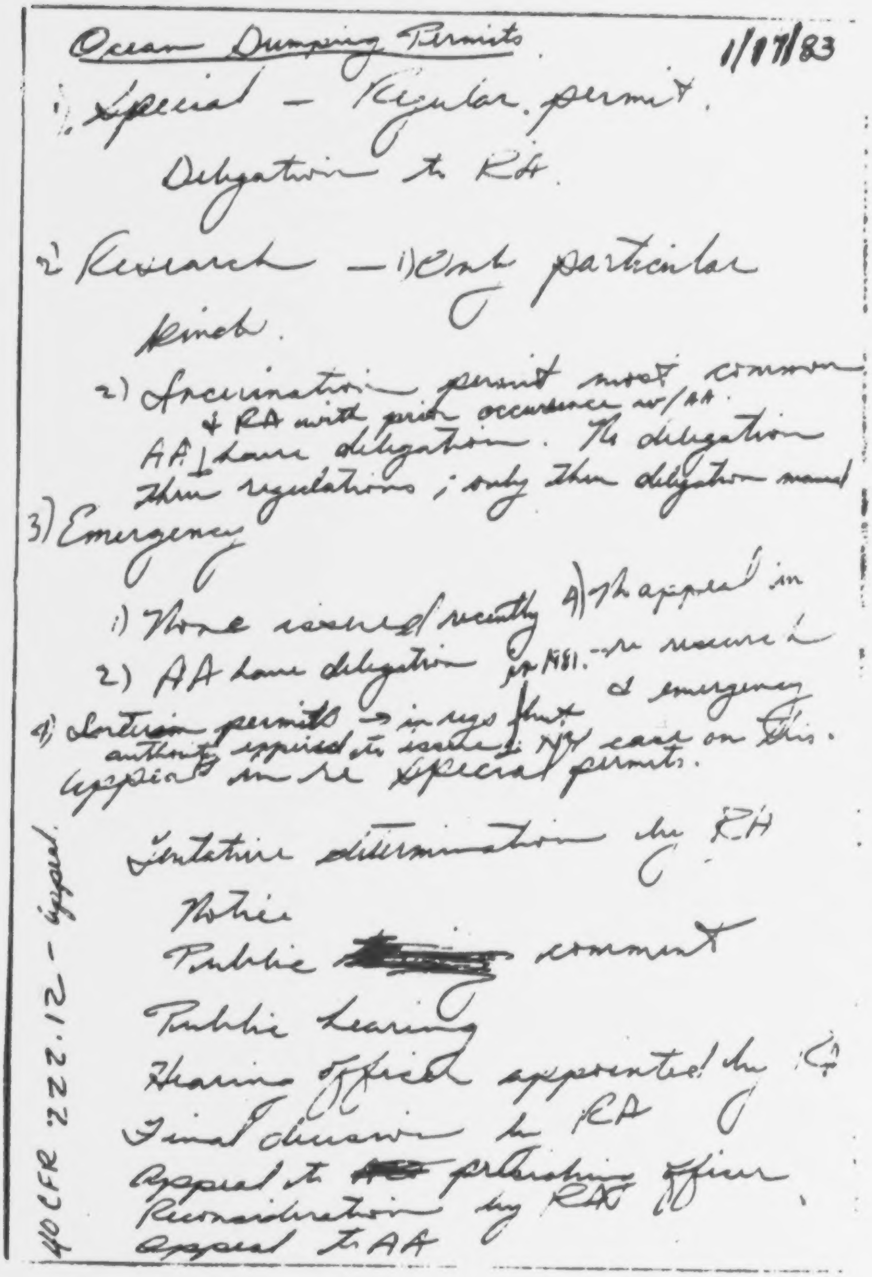
In preparation for the meeting, I prepared some notes on a card like this, which I still have.

**Mr. Levitas.** Could we see those? Do you have them with you?

**Mr. Yamada.** No, I don't.

**Mr. Levitas.** Could you make that copy available for us?

**Mr. Yamada.** I think it is only one card, maybe two cards at the most.



Ocean Dumping Permits 1/17/83

1) Special – Regular permit.
Delegation to RA.

2) Research – 1) Only particular kind.
2) Incineration permit most common
& RA with prior occurrence w/AA.
AA have delegation. The delegation
their regulations; only then delegation named

3) Emergency
1) None issued recently 4) The appeal in
2) AA have delegation in 1981. – no reason to
& emergency
4) Interim permits → in regs that
authority applied to issue in NY case on this.
appeal on the special permits.

Tentative determination by RA
Notice
Public [illegible] comment
Public hearing
Hearing officer appointed by RA
Final decision by RA
Appeal to ~~AA~~ presiding officer.
Reconsideration by RA
Appeal to AA

40 CFR 222.12 – appeal.

In applying for special permit, have to look at following criteria:
1) land based disposal
2) environmental effects on ocean dumping.

London Dumping Convention applies by Statute – Ocean Dumping Act.

Appeal in re Research
1) Admin. makes tentative decision
2) Notice, comment, hearing
3) Admin issues permit
4) Appeal to ~~pre~~ adjudicatory hearing
5) Administrator makes final decision.

Standing to appeal – Any interested person who participated in the public hearing has standing.

Mr. LEVITAS. So you had some advance information about what was going to be discussed.

Mr. YAMADA. Yes.

Mr. LEVITAS. And you received that information from Mr. Perry?

Mr. YAMADA. That afternoon.

Mr. LEVITAS. And Mr. Perry, do you recall when Mr. Sanderson contacted you to set up that meeting?

Mr. PERRY. I think he called me from Denver and said he was coming the next day and asked if I would be in the office. I said, yes.

Mr. LEVITAS. And did you arrange a time?

Mr. PERRY. He said it would be late in the afternoon. He did not say a precise time, and it was not on my calendar.

It was not a formal meeting. He said, "I am going to stop in."

Mr. LEVITAS. If you would, Mr. Yamada, tell us the substance of that meeting.

Mr. YAMADA. Basically there were only two issues discussed. One was the difference between the three different types of ocean-dumping permits, which are special, emergency and research and development, and who was authorized to issue the permits.

The second issue was the administrative procedure in issuing a permit.

Mr. LEVITAS. Did Mr. Sanderson indicate why he wanted to know about that?

Mr. YAMADA. I don't recall that, no.

Mr. LEVITAS. Mr. Perry, he did not tell you why?

Mr. PERRY. I think the general types of permitting, and more the regulatory involvement—

Mr. LEVITAS. Did you know that one of the companies that Mr. Sanderson was affiliated with was seeking a permit?

Mr. PERRY. I did not know that at the time, no, sir.

Mr. LEVITAS. Mr. Yamada?

Mr. YAMADA. No, I didn't.

Mr. LEVITAS. Didn't either of you ask him or did you think he was there on some sort of academic curiosity?

Mr. PERRY. I suspected he probably had something.

Mr. LEVITAS. Obviously. Doesn't common sense tell you that he must have some specific interest in the matter or he would not have troubled you to begin with about it?

It was not like executive privilege, when he may have had an academic or other interest in the matter.

Mr. PERRY. Well, he was concerned as to whether or not the regional administrator issued the permit with valid delegation of authority, and he was involved when he was with the agency with policy. So that was one of the things.

Mr. LEVITAS. Let me see if I can make the point so that it can perhaps refresh your memory.

You do know that Mr. Sanderson is associated with Chemical Waste Management?

Mr. PERRY. Yes.

Mr. YAMADA. I did not know that at the time.

Mr. LEVITAS. You did not know that, but Mr. Perry knew that.

Mr. YAMADA. Yes.

Mr. **Levitas**. Am I correct that Chemical Waste Management has a contract with the settling parties at Seymour, IN, to do the cleanup?

Mr. **Perry**. Yes, they do.

Mr. **Levitas**. Do you know whether there is any indication that one of the ways in which they intend to perform that cleanup and dispose of the material has to do with incineration?

Mr. **Perry**. No, sir, I did not know that.

Mr. **Levitas**. You did not know that?

Mr. **Perry**. No, sir.

Mr. **Levitas**. Were you ever briefed on the terms of the settlement and the arrangements for the cleanup at the Seymour site?

Mr. **Perry**. Not in detail.

Mr. **Levitas**. It is my understanding that you were intimately involved in that whole settlement.

Mr. **Perry**. I was involved only insofar as the legal nature of the consent decree.

The staff did the technical negotiations in the program, and primarily the Justice Department, through Mr. Ramsey and Mr. Lucero and Mr. Mike Brown, did all the technical negotiations on that.

I did not get involved in that. I did get involved strongly when it came to what was the nature of the final legal issue, and that was the court-approved consent decree. I did get involved in that because that was the ultimate decision I had to make.

Mr. **Levitas**. But you knew Chemical Waste Management was going to be involved?

Mr. **Perry**. Yes, I did.

Mr. **Levitas**. And that they were going to make a contract and set up a trust fund?

Mr. **Perry**. Yes.

Mr. **Levitas**. And until I just mentioned it, did you ever have any idea that they might have been looking at an incineration permit in order to do the job?

Mr. **Perry**. I did not know until you just mentioned it.

Mr. **Levitas**. Mr. Yamada, how about you?

Mr. **Yamada**. That Chemical Waste was seeking a permit?

Mr. **Levitas**. Yes.

Mr. **Yamada**. No, I did not know that at the time.

Mr. **Levitas**. During the course of this conversation, did either of you ask Mr. Sanderson, what is your interest in this? What do you want to know this for?

Mr. **Perry**. I don't believe that came up. I can't recall.

Mr. **Levitas**. Mr. Yamada?

Mr. **Yamada**. No, I did not ask him. I was asked to give a briefing, and I came in and gave a briefing on a subject.

Mr. **Levitas**. And, Mr. Perry, you had no idea?

Mr. **Perry**. Mr. Sanderson did not get involved in that. It was a relatively short briefing. We did not get involved in who he was representing or what.

Mr. **Levitas**. Was it an open-door or closed-door briefing?

Mr. **Perry**. I usually leave my door open.

Mr. **Levitas**. Do you ever recall having a meeting with Mr. Sanderson in your office in a closed-door briefing?

Mr. PERRY. Yes.

Mr. LEVITAS. Do you ever recall having a meeting of that sort with Mr. Sanderson in which no one else was present other than you and Mr. Sanderson?

Mr. PERRY. Yes, I am sure I have had those meetings.

Mr. LEVITAS. One last point, and then, Mr. Molinari, I will recognize you.

I want to get back to the advice that Mrs. Gorsuch received. I understand that you were aware of the fact that while we were negotiating with the administration prior to December 16 to see if we could resolve the documents matter, that you were aware at that time that the Justice Department was preparing a civil action to bring against the House of Representatives upon the contempt citation being voted?

Mr. PERRY. I was aware generally. I did not know the legal nature of what the complaint would look like and how the document that was filed in court would be styled or anything like that. I knew that there was some action being anticipated.

Mr. LEVITAS. Do you know when they started? When did you first hear of the possibility that Justice might be preparing such a lawsuit?

Mr. PERRY. I think it was just a few days before. It was very close to the contempt resolution by the House.

Mr. LEVITAS. It was after this full committee had voted the contempt?

Mr. PERRY. Yes. I think that is when it started to become more apparent that Justice was going to take action. But not too much before that, Mr. Levitas, because the style of the complaint was really a very last minute thing.

Mr. LEVITAS. Apparently shortly thereafter, after that lawsuit was filed, attorneys were hired for EPA for Mrs. Gorsuch, the Boston firm of Ropes & Grey.

Were you involved in the decision to hire that law firm?

Mr. PERRY. No, sir, I was not.

Mr. LEVITAS. Do you know who was involved in that decision?

Mr. PERRY. I think the Administrator felt that in view of the fact that she had some personal liability in the contempt case, criminal liability, that she should have her own separate constitutional lawyer.

The main part was that the Agency itself did not have an experienced constitutional attorney in our law shop. We never had gotten involved in this type of litigation before, and I did advise him.

Mr. LEVITAS. What about the Justice Department? They've got a few thousand lawyers in the Solicitor General's office.

Mr. PERRY. Yes, they've got some very good lawyers there.

Mr. LEVITAS. Why didn't you just rely upon their advice?

Mr. PERRY. That was her decision, Mr. Chairman.

Mr. LEVITAS. Do you know why?

Mr. PERRY. I think she felt comfortable having it in-house. Just like any subject to litigation, you feel more comfortable when you have your own lawyers. I think that is how she looked at it.

Mr. LEVITAS. Mr. Perry, I remember the date Mr. Olson, the Assistant Attorney General was sitting beside Mrs. Gorsuch at that very table saying I am her lawyer. Mr. Olson is a very capable attorney as I understand it?

Mr. PERRY. He is.

Mr. LEVITAS. And she did not feel comfortable with Mr. Olson continuing to represent her?

Mr. PERRY. Well, I cannot say that but I can say that she felt more comfortable having the Agency advised by additional counsel.

Mr. LEVITAS. I suggest to you that Mrs. Gorsuch thought she was getting bad legal advice and that she was being led into a very serious situation and wanted her own lawyer.

Mr. PERRY. She was very concerned, Mr. Chairman, I will assure you that.

Mr. LEVITAS. And thought she was not getting good legal advice.

Mr. PERRY. I cannot say that.

Mr. LEVITAS. Did she not ever discuss that with you?

Mr. PERRY. She discussed it and she was concerned about the advice she was getting.

Mr. LEVITAS. She did not think she was getting good advice?

Mr. PERRY. I cannot say that she did not think she was getting good advice. She was concerned about it.

Mr. LEVITAS. Well, she went out and hired a Boston law firm who was representing somebody you were in proceedings with at the time. She must have felt pretty concerned with that multimillion-dollar bank of lawyers down at the Justice Department Solicitor General's office to go out and hire these attorneys, she must have felt uncomfortable with the advice she was getting.

What is more, I saw Mrs. Burford on television having been told that the Justice Department was not going to represent her, and she said something to the effect that at least we will get some good legal advice or words to that effect.

Does that not sort of corroborate what I am suggesting to you?

Mr. PERRY. It appears to so corroborate.

Mr. LEVITAS. Mrs. Gorsuch thought that she was getting bad legal advice from the Justice Department and that is why arrangements were made to hire Ropes & Grey?

Mr. PERRY. I cannot say what she was thinking.

Mr. LEVITAS. You were not consulted at all?

Mr. PERRY. In the hiring of the firm, no, sir.

Mr. LEVITAS. In recommending the firm?

Mr. PERRY. No, sir.

Mr. LEVITAS. Do you know who was?

Mr. PERRY. No, sir, not from my own personal knowledge.

Mr. LEVITAS. Do you know how Mrs. Gorsuch heard of Ropes & Grey?

Mr. PERRY. Yes, sir.

Mr. LEVITAS. How?

Mr. PERRY. I think she heard about them through the counsel for the Republican National Committee.

Mr. LEVITAS. And who was that?

Mr. PERRY. Roger Moore.

Mr. LEVITAS. How did she happen to inquire of Mr. Moore?

Mr. PERRY. I have no knowledge.

Mr. MINETA. Mr. Chairman?

Mr. LEVITAS. Yes, sir, Mr. Mineta.

Mr. **Mineta**. Would you yield for a question.

Mr. **Levitas**. Yes, sir.

Mr. **Mineta**. Mr. Perry, were you ever consulted by Mrs. Gorsuch Burford about the credibility of the legal advice she was getting from Justice?

Mr. **Perry**. Yes, sir, my staff and I advised her; like all lawyers we have a hard time agreeing sometimes with each other, and we would review some of the pleadings at Justice and have some concerns and voice our opinion both to Justice and to the Administrator.

Mr. **Mineta**. Did you ever say to her: Well gee, Anne, you have got some personal liability here, maybe you had better go outside the Government and hire someone on your own?

Mr. **Perry**. I am sure that was discussed.

Mr. **Mineta**. Did you say that to her?

Mr. **Perry**. Yes, sir, I did.

Mr. **Mineta**. Did you recommend at that point the Boston firm?

Mr. **Perry**. No, sir, I did not recommend the Boston firm.

Mr. **Mineta**. You did recommend to her that she consider outside counsel?

Mr. **Perry**. I said consider it but I felt at the time that this case would not go so far as that a grand jury would be indicting her. In the back of my mind I thought it would never reach that, Mr. Mineta.

I always felt that ultimately her personal exposure was really more theoretical but knowing the real world sometimes theory becomes into reality and I did tell her there was the possibility, but I always would say it was remote.

Mr. **Mineta**. Thank you, Mr. Chairman.

Mr. **Levitas**. On that point, who is going to represent Mrs. Burford tomorrow, it is not the Justice Department?

Mr. **Perry**. No, sir, Mrs. Burford is going to represent herself. She is a most courageous lady. She is going to represent herself, Mr. Chairman, and I really admire her. There is never a more faithful soldier that this President could have.

Mr. **Levitas**. You remember, Mr. Perry, the old maxim when a person serves as his own attorney, do you recall the rest of that?

Mr. **Perry**. Yes, sir, I certainly do. He has a fool for a client.

I hope this is not the case here.

Mr. **Mineta**. Mr. Chairman, would you refresh my memory about that old addage?

Mr. **Levitas**. Mr. Perry just did.

Mr. **Perry**. It was Abraham Lincoln. "The person who serves as his own attorney has a fool for a client."

Mr. **Levitas**. Well, we are going to come right back and I will start off with Mr. Molinari and hopefully we can conclude and make substantial progress.

There is a vote on the Pickle amendment to the Social Security bill in progress. Let's go for a vote and come back. The subcommittee will stand in recess.

[Recess.]

Mr. **Lipinski** [presiding]. May we have everyone take their seats, please.

The Oversight and Investigations Subcommittee is going to resume at the present time as soon as everyone that is party to the proceedings is situated in the proper place.

The Chair recognizes the gentleman from New York, Mr. Molinari.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. Perry, we have seen, I think, two sets of diaries that you have. One, I take it, was kept by yourself and one was kept by your secretary.

Mr. **Perry**. Sir, my secretary keeps both of them. What she does is try to keep mine up with hers and hers up with mine. Sometimes I will make a notation and she will have to put it on hers and vice versa. But she is in charge of both sets.

Mr. **Molinari**. Do you have any other diaries in your office?

Mr. **Perry**. I have my telephone log that I think has been sent to the committee.

Mr. **Molinari**. No other diaries though as far as appointments are concerned?

Mr. **Perry**. No, sir; they will be on the appointment calendar or telephone log but that is it.

Mr. **Molinari**. Mr. Perry, do you know to whom you sent that telephone log? Was it our full committee or was it the subcommittee?

Mr. **Perry**. We have so many committees, Mr. Molinari. I could send you a separate one if you like on the telephone log.

Mr. **Molinari**. Could you just tell me what the practice of your office was with respect to keeping the telephone log?

Mr. **Perry**. Yes, sir. When I get a call it is usually logged in. I cannot guarantee you that everyone is because sometimes my secretary is out and it is just not in there. But basically it shows the incoming call; that is probably less accurate on the outgoing calls, but it is a generally accurate document.

Mr. **Molinari**. Is this something that you keep?

Mr. **Perry**. No, the secretary keeps it. I like to always return calls and that is why I keep one. There is no law that says I have to.

Mr. **Molinari**. I understand that, but it was your practice to make a record of outgoing calls as well?

Mr. **Perry**. It is mostly the incoming calls as listed that are probably more reliable. I make a lot of outgoing calls myself and my secretary would not know.

Mr. **Molinari**. That is not my question. Did you instruct your secretary to make a record of the calls that you made through her?

Mr. **Perry**. No, I never instructed her. She just did it as a regular office practice.

Mr. **Molinari**. I was interested in your response to Mr. Levitas when he asked you about whether you might have been present in your office on the weekend of February 4. Before you answered him you took a look at your diary and then after looking at it you said you were not there.

Now, it was my impression from an examination of the diary that unless you had an appointment there was not any entry in there that you might have been present, am I correct in that assumption?

Mr. **Perry**. I think there is probably a line drawn through those 2 days that I was out ill. That is usually what happens. They will just show at the top and they will say Perry out. You see she started to erase the calendar for that day since I did not come in.

Mr. **Molinari**. Let me make sure I understand that.

Everyplace where we see a line drawn that means you were out of the office?

Mr. **Perry**. Yes, sir, probably, or that meeting was canceled. I might have been in part of the day on the 3. I might have gone home early that day or something. Oh, I remember now. I was in that day. I was ill but I was not seeing anybody and I was there probably the full day but I was to give a talk to the regional counsel 10 meeting and I remember I had to send Mr. Brown because I was not feeling well.

Mr. **Molinari**. Then do you want to correct the testimony you gave earlier?

Mr. **Perry**. I was out all day Friday and part of the day before. I live very close to the office and I probably went home and came back is what happened. I was in and out.

Mr. **Molinari**. On which day?

Mr. **Perry**. On the 3. I was out all day on the 4th. I did not go in at all on that day.

Mr. **Molinari**. Mr. Perry, before we recessed you made a statement which I marked down. I think I have it correct. It says that you wanted court-approved consent decrees.

Mr. **Perry**. That is correct.

Mr. **Molinari**. Why?

Mr. **Perry**. Because a court-approved consent decree in these multiparty, multi-million-dollar cases have more teeth. They also have the Department of Justice involved. They also are given to a Federal district judge to review. They also are open to public notice and comment for a period so the public can review that settlement.

It puts the regulated community on notice that if that agreement is violated we can seek a contempt action and I think it is a more legally enforceable——

Mr. **Molinari**. Have you not made the statement to members of the staff of this committee that you preferred them because it saved the Agency the embarrassment and criticism of a settlement?

Mr. **Perry**. Well, it opens it up for public comment and for a Federal district judge to rule on. And it does isolate us from being charged with sweetheart deals.

Mr. **Molinari**. That does not really concern you, being charged with sweetheart deals. When you work for the Government you are going to be doing a lot of things.

Mr. **Perry**. It certainly does because I feel a very, very strong obligation to represent the American people, Mr. Molinari.

Mr. **Molinari**. I am sure you do and that is probably one of the reasons why you preferred to litigate rather than negotiate.

Mr. **Perry**. Well, there are always the cases that common sense would dictate if it is not complicated, if it is just a little mom-and-pop operation we would probably have a voluntary agreement or an administrative order, but these multiparty, multi-million-dollar, sophisticated, technical complex cleanups, I cannot in all conscience allow the American public to take on a massive cleanup like that without having all the teeth we can get in it.

Mr. MOLINARI. Mr. Perry, did you ever instruct any of your subordinates not to discuss any conferences, testimony, or whatever that they might be having before any congressional committee before they cleared it with you first?

Mr. PERRY. No, sir, not to my knowledge.

Mr. MOLINARI. Did you ever instruct any of your subordinates not to have any meetings with the White House or White House representatives unless they cleared it with you first?

Mr. PERRY. I might have asked that I be informed of those meetings.

Mr. MOLINARI. Did you ever instruct any of your subordinates not to have any conversations with the Department of Justice unless they cleared it with you first?

Mr. PERRY. No, sir; I like to be informed, but I never did. We deal with the Department almost every day, and I would be on the phone giving permission all day if that were the case.

Mr. MOLINARI. Let me read something to you, Mr. Perry: "Your office is to provide me with a pre-briefing on any Congressional testimony in any meetings with the Congress, White House, or Department of Justice."

Do you remember that?

Mr. PERRY. No, sir. If you could refresh my memory, what is the date? It is something I put out?

Mr. MOLINARI. Well, yes, sir. This is put out by the U.S. Environmental Protection Agency, subject: "Interim procedures for the Office of Enforcement Counsel." It is dated 29, 1982. I don't know what month it is because I cannot read the date stamp. It is from Robert M. Perry, Associate Administrator for Legal and Enforcement Counsel and general counsel to William A. Sullivan, Jr., enforcement counsel, and I have just read to you verbatim paragraph 5 of that statement.

Would you mind clearing that up? You can confer if you would like.

Mr. PERRY. Sir, could you tell me the date?

Mr. MOLINARI. Well, I have got to guess but I think it was March 29, 1982. All that appears on this photostat is 29. It might be 2-9-82, but my recollection is that you didn't become Associate Administrator until March.

In fact, I think it was March 29, 1982, that you became Associate Administrator, wasn't it?

Mr. PERRY. That could have been the same day.

Mr. MOLINARI. It sounds like it. Does that help you any?

Mr. PERRY. Was that to Mr. Bill Sullivan? Is that from me to Mr. Sullivan?

Mr. MOLINARI. To William A. Sullivan, Jr. I don't know if that is Bill Sullivan or not.

Mr. PERRY. Yes, sir. I probably sent that, then.

Mr. MOLINARI. So then you did give direction to some of the subordinates that before they were able to speak to the White House, or Congress, or the Department of Justice, that they had to give you a prebriefing first?

Mr. PERRY. I might have at that time, because I had just taken over, and I wasn't sure of the scope of what was going on in the enforcement counsel office. And if I recall, I wanted to know what was going on, so that when I implemented my policies, I would have some idea of who the contacts were, who we should be talking to, who he was talking to.

It was more of an interim procedure, if I recall.

Mr. MOLINARI. It certainly has the appearance of a gag rule within your Department. You are telling a gentleman in this memorandum who is identified as enforcement counsel, a relatively high position. He is not permitted to discuss anything with the Department of Justice, with the White House, or Congress unless he comes to you first and gets your approval.

Mr. PERRY. I would like to see the memo to refresh my memory, if I could, to explain a little bit.

Mr. MOLINARI. I checked it off. I think it is No. 5 on there.

Mr. PERRY. Yes, sir.

It was very, very short lived as Mr. Yamada was just reminding me. At the time, I recall now, we were very concerned about getting our enforcement program in shape and with the added responsibility that was given to me, I wanted to have briefings on what was going on, so I could properly manage the shop.

I felt at the time it was a little bit out of control, but I did not mean this as a gag rule.

Mr. MOLINARI. What is your definition of out of control, Mr. Perry? Why would you insist that an enforcement counsel, a person with that title, clear with you any statements that he was going to give in advance?

You are talking about broad scope here: the White House, the Department of Justice, Congress. Did you distrust this man?

Mr. PERRY. No, sir, I don't think I distrusted him. I think it was a management tool so that I could get control of the situation at the time.

Mr. MOLINARI. Control of what situation? That is what I am trying to get to. What was the situation? There seems to have been some real problem existing at the time. I don't understand what it is you are referring to. Control of what situation?

Mr. PERRY. We had to get our enforcement program moving at that time. Our cases were not moving. We were at a very low ebb and I wanted to get to the bottom of it as to what was going on and why we weren't moving the cases like we should be.

Mr. MOLINARI. What has that got to do with meeting Members of Congress, or the White House, or the Department of Justice? Indeed, it would seem to me, particularly when you are thinking about the Department of Justice, that might have been an area where he was trying to get things rolling by talking to the Department about the cases that were pending before the Environmental Protection Agency.

Mr. PERRY. No, sir; put yourself in my chair at the time. All of a sudden you are given the responsibility for an enforcement program that isn't working with low morale, producing no cases, having very great concern voiced by the Department of Justice that they were very concerned about our enforcement program.

Members of the Congress were very concerned about our enforcement program, and I wanted to be brought up to date on what was going on so I could properly respond to the Congress, because enforcement counsel was no longer head of enforcement at this stage.

This is the key. I was then made the Associate Administrator. I took on the responsibilities of the enforcement counsel at that time. He reported to me. Before that, he was his own boss, so to speak.

So, I was his superior then and what I was doing was trying to get control.

Mr. MOLINARI. Earlier today, Mr. Perry, you talked with glowing pride about the accomplishments of EPA and the job it is doing. Now you are looking at a document that is not even 1 year old, and you are telling us that the morale is at a low ebb, there were problems with enforcement, and things aren't going well.

This seems to contradict what you said before the break. I find it difficult to reconcile those statements.

Mr. PERRY. It is about 1 year old, and we accomplished all of those great referrals, good settlements, and this is what is so good about it and how good the staff is over at EPA. We did that in a 6-month period, in half a year. This is when I was given the control of the enforcement branch and all of that was done, Mr. Molinari, in the period of time from roughly April to September 30.

That is how good that staff can work and how good my task force can work. I am going to give you their report to show you what we inherited and what we had to put up with and how we unraveled all these complications and got a good, going organization.

Mr. MOLINARI. Let's hold off on that.

Earlier today, I referred to Mr. Yamada's memorandum discussed the redistribution of resources. Mr. Yamada, in that memorandum, states that there was a need to reexamine the current distribution of legal resources and talks about performance and the performance level.

Now we are talking about August, or 4 months after the period when you were doing such a great job. Come on, Mr. Perry. On August 13, 4 months into the 6-month period when you are supposed to be doing such a great job, you have a memo sent to regional counsel telling him to get off his butt and send more cases to headquarters or his staff will be cut down.

It doesn't make sense. I can't reconcile what you are saying and frankly, I find it difficult to believe. I don't know wherein the contradiction is coming from, but you are contradicting yourself.

Mr. PERRY. No, sir. This was a management tool, an incentive tool.

Mr. MOLINARI. If you were doing so well in that 6-month period beginning in April, why did you have to have this sent out? Why did Mr. Yamada pick this document up and send it out to regional counsel, who then brought in a flurry of cases?

Mr. PERRY. You put your hand right on it. This document produced the cases.

Mr. MOLINARI. So that it wasn't 6 months beginning in April. We have a document written in August.

Mr. **Perry**. It produced the cases and also it gave us a criteria to base projections and resources upon. In other words, it wasn't just the forecasts without any basis for case referral.

Mr. **Molinari**. Mr. Perry, you said I just put my hand on it, and this was the document that was responsible for it. I am saying the testimony you gave before about the 6-month period, beginning in April, indicated that this was when you had great production. That wasn't correct, then, was it?

Mr. **Perry**. No, sir. They all knew this was going to be coming down the road.

Mr. **Molinari**. They started responding in April to something that was going to come out in August?

Mr. **Perry**. This was formalizing a concept that was developed. We said we are going to be basing our resources on some real practical commonsense factors and the most commonsense factors were cases, administrative orders, and the advice that they were giving to their regional counsels. They knew that their shop was going to be staffed based on the amount of work that they could perform.

And this capitalized on that and verbalized the concept.

Mr. **Molinari**. Was it this document, then, that resulted in the flurry of cases being referred to headquarters, or was it the hint of the document that was to come that created that flurry of cases?

Mr. **Perry**. It was combination of both. This document, by the way, was a tool. The resources that were distributed are really different than this. We took it in, the Comptroller of EPA looked at this, and he had his view of what a work model should be like all good comptrollers, and he put his work model in and we ended up with a combination of this and his work model as the final distribution of resources.

This is not the sole one. This was more of an incentive tool to create an atmosphere of a real working office, and it did work.

Mr. **Molinari**. I would like to ask that you submit to the subcommittee a copy of the final reallocation so that we can compare it to the memorandum.

Mr. **Perry**. I would be very happy to.

[The following was received from Mr. Percy:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

31 JAN 1983

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

MEMORANDUM

TO: Regional Counsel
Regions I - X

FROM: Robert M. Perry Robert M. Perry
Associate Administrator and General Counsel

SUBJECT: FY 1983 Operating Plan

Attached is the final distribution of Regional Counsel resources for FY 1983. These final allocations were based on comments to my proposed distribution of December 1, 1982 and include distribution of all available Regional Counsel resources. These resource levels will be reflected in revised Regional allowances to be issued shortly.

The revised allowances will reallocate available Personnel Costs and Benefits (PC&B) funds as well as travel and support costs. I am aware that our support funds are inadequate to fully cover on-board personnel and am working with the Office of the Comptroller to address this problem. In the meantime, I urge Regional Counsel to obtain whatever help the Regions can provide in keeping with the memorandum of November 3, 1982 issued by the Associate Administrator for Policy and Resource Management which established the new allowance structure. The final allowance will also include resources to support the field staff of the Criminal Enforcement Division assigned to four area offices.

You will receive shortly a proposal for allocating FY 1984 Regional Counsel resources. The final FY 1984 resource distribution method will consider the comments of all Regional Counsel as well as the involvement of two lead Deputy Regional Administrators. The Associate Administrator for Policy and Resource Management has identified Fran Phillips of Region VI and Stan Laskowski of Region III to be involved as lead DRA's in our workload model development activities. I am confident that we can work together to develop a workload model for FY 1984 that provides a sound basis for distributing available resources.

Also attached is a listing of FY 1983 output goals as identified in your comments to my December 1, 1982 memorandum. Any adjustments to these levels will be handled as part of the FY 1983 accountability system. Any proposed changes should be submitted along with supporting rationale to Kirk Sniff, Director of the Office of Legal and Enforcement Policy, for consideration.

I intend to use actual performance against these goals this year in arriving at your overall performance rating for FY 1983. Accordingly, I ask that you provide a quarterly report to Kirk Sniff of actual performance for the output goals identified. Kirk will provide additional guidance as to the format of these reports at the upcoming Regional Counsel meeting on February 1, 2 and 3, 1983. The target date for your first quarter report is February 15, 1983. Future reports are to be submitted within 15 days of the end of the quarter.

Attachment

cc: Fran Phillips, Region VI
Stan Laskowski, Region III

### Office of Legal and Enforcement Counsel
### Distribution of Regional Counsel Resources
### FY 1983

| Program Element | I | II | III | IV | V | VI | VII | VIII | IX | X | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| I. Enforcement Policy and Operations (AJAH3A) | | | | | | | | | | | |
| PFTE | 4.9 | 7.2 | 11.9 | 8.2 | 17.5 | 7.1 | 6.5 | 5.6 | 4.7 | 6.0 | 79.6 |
| OPFTE | .6 | .9 | 1.3 | 1.1 | 2.1 | .9 | .8 | .7 | .6 | .3 | 9.3 |
| FTE | 5.5 | 8.1 | 13.2 | 9.3 | 19.6 | 8.0 | 7.3 | 6.3 | 5.3 | 6.3 | 88.9 |
| II. Enforcement Policy and Operations - Superfund (TJBY3A) | | | | | | | | | | | |
| PFTE | 2.8 | 7.8 | 4.7 | 5.2 | 10.5 | 7.0 | 2.4 | 1.9 | 1.5 | 2.2 | 46.0 |
| OPFTE | .1 | .5 | .3 | .4 | .7 | .6 | .2 | .1 | .1 | .2 | 3.2 |
| FTE | 2.9 | 8.3 | 5.0 | 5.6 | 11.2 | 7.6 | 2.6 | 2.0 | 1.6 | 2.4 | 49.2 |
| III. Legal Services (2XT5A) | | | | | | | | | | | |
| PFTE | 6.4 | 6.2 | 7.2 | 7.1 | 10.5 | 6.0 | 4.5 | 5.4 | 5.7 | 4.4 | 63.4 |
| OPFTE | .7 | .7 | .7 | .8 | .9 | .7 | .5 | .6 | .6 | .5 | 6.7 |
| FTE | 7.1 | 6.9 | 7.9 | 7.9 | 11.4 | 6.7 | 5.0 | 6.0 | 6.3 | 4.9 | 70.1 |
| IV. Hazardous Substances Legal Services (EYY5A) | | | | | | | | | | | |
| PFTE | 1.0 | 2.2 | 1.2 | 1.2 | 2.3 | .6 | .3 | .3 | .5 | .4 | 10.0 |
| OPFTE | .5 | .7 | .6 | .8 | .4 | .4 | .1 | .1 | .4 | - | 4.0 |
| FTE | 1.5 | 2.9 | 1.8 | 2.0 | 2.7 | 1.0 | .4 | .4 | .9 | .4 | 14.0 |
| V. TOTAL | | | | | | | | | | | |
| PFTE | 15.1 | 23.4 | 25.0 | 21.7 | 40.8 | 20.7 | 13.7 | 13.2 | 12.4 | 13.0 | 199.0 |
| OPFTE | 1.9 | 2.8 | 2.9 | 3.1 | 4.1 | 2.6 | 1.6 | 1.5 | 1.7 | 1.0 | 23.2 |
| FTE | 17.0 | 26.2 | 27.9 | 24.8 | 44.9 | 23.3 | 15.3 | 14.7 | 14.1 | 14.0 | 222.2 |

Office of Legal and Enforcement Counsel
Regional Counsel
Activity Levels
FY 1983

| Projected Activity Levels Based on Resource Distribution | I | II | III | IV | V | VI | VII | VIII | IX | X | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| I. Projected Civil Referrals to HQ in FY 1983 | | | | | | | | | | | |
| Non-Superfund | 7 | 16 | 27 | 19 | 48 | 13 | 8 | 13 | 7 | 13 | 171 |
| Superfund | 2 | 6 | 15 | 5 | 15 | 4 | 3 | 2 | 4 | 2 | 58 |
| Total | 9 | 22 | 42 | 24 | 63 | 17 | 11 | 15 | 11 | 15 | 229 |
| II. Projected Adversarial Administrative Complaints & Orders to be issued in FY 1983 | | | | | | | | | | | |
| Non-Superfund | 50 | 71 | 37 | 55 | 319 | 68 | 56 | 61 | 63 | 107 | 887 |
| Superfund | 2 | 8 | 4 | 1 | 6 | 4 | 1 | 4 | 10 | 3 | 43 |
| Total | 52 | 79 | 41 | 56 | 325 | 72 | 57 | 65 | 73 | 110 | 930 |
| III. Projected Administrative Litigation in FY 1983 | | | | | | | | | | | |
| Non-Superfund | 4 | 6 | 12 | 9 | 26 | 6 | 9 | 8 | 5 | 6 | 91 |
| Superfund | - | - | - | - | - | - | - | - | - | - | - |
| Total | 4 | 6 | 12 | 9 | 26 | 6 | 9 | 8 | 5 | 6 | 91 |
| IV. Projected Judicial Litigation in FY 1983 | | | | | | | | | | | |
| Non-Superfund | 5 | 6 | 22 | 10 | 20 | 10 | 6 | 1 | 6 | 7 | 93 |
| Superfund | 1 | 5 | 4 | 2 | 15 | 2 | 2 | 1 | 3 | 2 | 37 |
| Total | 6 | 11 | 26 | 12 | 35 | 12 | 8 | 2 | 9 | 9 | 130 |
| V. Projected Judicial Consent Decrees Negotiations in FY 1983 | | | | | | | | | | | |
| Non-Superfund | 6 | 10 | 30 | 11 | 48 | 12 | 8 | 11 | 7 | 9 | 152 |
| Superfund | 1 | 6 | 3 | 6 | 6 | 2 | 2 | 2 | 3 | 1 | 32 |
| Total | 7 | 16 | 33 | 17 | 54 | 14 | 10 | 13 | 10 | 10 | 184 |

Mr. MOLINARI. Going back to Mr. Sanderson, look at your diary of December 17, 1981.

Mr. PERRY. I believe you have my 1981 calendar up there.

Was that December?

Mr. MOLINARI. December 17, 1981.

Mr. PERRY. Yes, sir, I have got it open to December 17, 1981.

Mr. MOLINARI. You had a meeting that day with Mr. Sanderson and Misters Sullivan, Hedeman, Capper, Daniel, and Hill. This meeting was on strategy.

Mr. PERRY. Yes, sir.

Mr. MOLINARI. Do you recollect discussing on that day lifting the suspension of dumping of hazardous waste drums in the interim status landfills?

Mr. PERRY. No, sir; I don't have any recollection of that.

Mr. MOLINARI. Do you have a recollection of having a meeting with Mr. Sanderson on any other day when such a discussion was held?

Mr. PERRY. Absolutely not, no, sir.

Mr. MOLINARI. Do you have a recollection of having a discussion of lifting that suspension with anybody else?

Mr. PERRY. Of course, with the administrator I did.

Mr. MOLINARI. When was that?

Mr. PERRY. I had many discussions on it. There had been staff briefings and I had many of them. I would have to go through the calendar.

Mr. MOLINARI. You don't have any recollection of having discussed that with Mr. Sanderson——

Mr. PERRY. No, sir, I never discussed that problem with him.

Mr. MOLINARI. OK.

It is your testimony then that you didn't have any such conversation?

Mr. PERRY. Not with Mr. Sanderson.

Mr. MOLINARI. OK.

Who did you discuss it with then other than Mrs. Gorsuch?

Mr. PERRY. With my staff. You know that is an unfortunate situation. Did you know that there were no regulations at all on containerized liquids in landfills prior to November 19, 1981? That is what is getting this thing totally out of focus because there were absolutely no regulations in the prior administration until that was——

Mr. MOLINARI. I understand. I am not interested in that right now, Mr. Perry.

Could you enlighten me as to your understanding of who was responsible for coming up with the proposal to lift the ban on dumping the barrels in the interim status landfills.

Mr. PERRY. Let me tell you how that happened.

Mr. MOLINARI. I wish you would.

Mr. PERRY. The past administration promulgated regulations that simply could not be enforced. They had a regulation that provided for 10-percent liquid determination in these containers and there was no way—can you imagine someone opening a barrel and trying to determine what 10-percent free liquid was?

We had a major lawsuit called the *Shell Oil* suit, many, many industry plaintiffs were involved, and there was an agreement that those regulations would be re-proposed by the Administrator.

The old regulation provided that this ban—there was no ban prior to November 19—would be automatically imposed on November 19, 1981.

In the meantime the Shell Oil plaintiffs and the Administrator were hoping that we could get the new proposal out and extend the imposition of the ban because there was—before that date there was no ban. What happened? I take a little responsibility for this. But what happened is we didn't get the regulation out, the proposal out prior to the 19th and the ban automatically went into effect and here the proposal was submitted to the Administrator after the ban went into effect.

At that point it was not made clear to the Administrator that when she signed the proposal she was lifting the ban, because it was always understood that the ban imposition would be delayed during promulgation and even the NRDC plaintiffs realized that, but what happened is the ban went into effect automatically and we presented it to the Administrator after that date. The new proposal and the proposal amounted to lifting the ban.

It was not really contemplated.

Mr. MOLINARI. Do you mean to tell me that Mrs. Gorsuch did not know the impact of signing the proposal?

Mr. PERRY. She knew, but she thought that the impact would be the same as was always anticipated and the imposition of the ban would be delayed. It wouldn't be lifted. All that happened was the ban was lifted.

Our original proposal was that on the 19th it would have been extended during the promulgation period.

Mr. MOLINARI. Why did it take 5 days then to rescind the lifting of the ban? As I recollect, there was a great furor over it.

Mr. PERRY. Yes, sir; there was, because the public was perceiving—they didn't realize there was no ban at all prior to November 19. Everyone thought that liquids and containerized drums were always banned.

Mr. MOLINARI. Why did it then take her 5 days to learn the impact of what she did?

Mr. PERRY. That is a remarkable management tool that we at EPA under her direction could so quickly go to promulgation and reimpose that ban that everyone was satisfied with.

Mr. MOLINARI. Five days is very quick.

Mr. PERRY. Yes, sir.

Mr. MOLINARI. Do you have any idea how many barrels were dumped in landfills throughout this country in those 5 days?

Mr. PERRY. I don't think there were very much. I think it got totally out of proportion, Mr. Molinari, I really do.

Mr. MOLINARI. Wasn't there a request by congressional committees that you furnish the number of barrels and that we were told there were inventories taken?

Mr. PERRY. There probably were.

Mr. MOLINARI. Do you have any idea how many barrels were dumped?

Mr. PERRY. No; I do not personally know. I can find out for you if you like.

Mr. MOLINARI. Were you convinced that some of the generators knew in advance of the lifting of the ban and that it was going to be lifted?

Mr. PERRY. No, sir, I was not aware of that. But they could have dumped all they wanted prior to the 19th, so I don't know what the big deal was.

Mr. MOLINARI. The big deal was that I am hearing that the Administrator was responsible for an action she didn't even know the consequence of when she did it. I find that amazing.

Mr. PERRY. No, sir, she thought that it would have been extended, the ban.

Mr. MOLINARI. I understand.

Mr. PERRY. Everyone agreed that that was an acceptable procedure.

Mr. MOLINARI. Mr. Perry, some time ago, on the day before the agreement was reached with Mr. Levitas and the White House formally settling the access this dispute that took place between the two branches of government. There were some tapes given to Mr. Levitas by representatives of the Department of Justice. I would like Mr. Levitas to correct me if my recollection is not on target here. Mr. Perry, are you familiar with that?

Mr. PERRY. Yes, sir; I am generally familiar.

Mr. MOLINARI. During a hearing I had asked that a full transcript of that tape be put into the record, and I think thereafter by letter dated March 1, 1983 you requested that the tape transcript not be released. Is that correct?

Mr. PERRY. Yes, sir. There was enforcement-sensitive information in there and let me add this, that prior to now that Stringfellow case is at a critical stage because we are trying to negotiate a court-approved consent decree and it is just at a very critical stage and that was my main concern.

Mr. MOLINARI. Mr. Perry, I assure you that as the person who made that request I would not want any information like that put into the record and when the nature of the information was called to my attention by the chairman, certainly I agreed to withdraw my request.

Mr. PERRY. I appreciate that.

Mr. MOLINARI. My question to you though, Mr. Perry, is since these tapes were tapes that were made by your staff, for other members of the EPA, how did they get into the hands of the Justice Department?

Mr. PERRY. In our case development we have attorneys from the Justice Department get involved at a very early stage. The Stringfellow case is a referred case. It is not filed yet but it is a referred case, that means my office has referred it to the Justice Department. That means the Justice Department lawyer is working with our staff in California.

So they would be the lead lawyer on the case.

Mrs. Dinkins asked her lawyer on the scene for the tapes. She then delivered them because the Department of Justice was actively involved.

Mr. MOLINARI. Didn't you think it was rather unusual that while you were denying to congressional committees and subcommittees so-called enforcement sensitive documents and the Department of Justice in advance of any agreement gave this tape to the same committees?

Mr. PERRY. Well, it did bypass the three-tiered review that we ordinarily utilize.

Mr. MOLINARI. It was enforcement-sensitive.

Mr. PERRY. I have not heard the tape. I am relying on my staff. I have not heard it, Mr. Molinari, but I understand that it is enforcement sensitive.

Mr. MOLINARI. Did you understand at that point in time that it was enforcement-sensitive?

Mr. PERRY. When they were putting the tape together?

Mr. MOLINARI. No; at the time the tape was given to Chairman Levitas?

Mr. PERRY. No, sir; I did not know at that time. That was handed over to you by Mrs. Dinkins and I did not know the contents of the tape nor that it even existed.

Mr. MOLINARI. Mr. Perry, within your agency do you have an ethics officer or official?

Mr. PERRY. Yes, sir; we do.

Mr. MOLINARI. Who might that be?

Mr. PERRY. Right now it is my deputy, Mr. Gerald Yamada who is on my right.

Mr. MOLINARI. And prior to Mr. Yamada it was who?

Mr. PERRY. Mr. Michael Brown. Prior to that I believe it was I.

Mr. MOLINARI. This is a copy of a handbook it entitled "Guidance on Ethics and Conflicts of Interest" Are you familiar with that?

Mr. PERRY. Yes; I am.

Mr. MOLINARI. How long were you the ethics official for EPA?

Mr. PERRY. Well, while I was general counsel.

Mr. MOLINARI. Prior to becoming Associate Administrator?

Mr. PERRY. Yes, sir; prior to becoming associate administrator.

Mr. MOLINARI. In that capacity did you find it necessary to ensure that copies of this document were furnished to new employees?

Mr. PERRY. Yes, sir; we did. I was very proud of this document.

Mr. MOLINARI. Were you proud of the procedure by which it was disseminated to the employees?

Mr. PERRY. It was given to all the—it wasn't given to the employees, it was given to all the ethics counselors; it has not been given to all the employees. Not yet. We are in the process.

Mr. MOLINARI. Was a copy given to Rita Lavelle?

Mr. PERRY. I believe we determined that she was an ethics counselor. It was given to her, yes. It was given to her office to give to her, whether she actually got it or not I don't know. She would have been an ethics counselor by virtue of her position and would have gotten one of these.

Mr. MOLINARI. What do you mean by ethics counselor?

She was a deputy counselor, it says to all deputy counselors, she was one of those.

Mr. MOLINARI. OK.

Was she responsible for advising those under her?

Mr. **Perry**. Yes, sir; that is why it went just to the head——

Mr. **Molinari**. It would be rather critical then, wouldn't it, that anyone with the title of deputy counselor should have received a copy of it?

Mr. **Perry**. Yes, sir.

Mr. **Molinari**. How about enforcement counsel, would he fit into that category?

Mr. **Perry**. Yes, sir; in fact he signed it, Mr. Brown did. He is the enforcement counsel.

Mr. **Molinari**. Are you aware of the fact that Ms. Lavelle testified she never saw a copy of that document?

Mr. **Perry**. I heard she did. She should have been given this.

Mr. **Molinari**. You have logs for telephones and logs for diaries but not for something as important as making sure deputy counselors receive a copy of ethics rules so they can advise people under them. Why didn't you have a system so you could assure that somebody in that position of deputy ethics counselor received a copy of this document?

Mr. **Perry**. We assumed this document that is addessed to all deputy counselors would have been delivered to them. I see no reason why it would not be.

Mr. **Molinari**. You assumed that. Who is vested with that responsibility? Was it not you during the period when you were the ethics official?

Mr. **Perry**. I believe that Mr. Brown was the designated ethics official at that time and he would be relying on his staff to ensure that this was properly disseminated.

Mr. **Molinari**. If I were to tell you that not only Ms. Lavelle but also other deputy counselors had not received a copy of the rules, would that shock you?

Mr. **Perry**. Well, I am informed that this was delivered by individual buckslip, as they call it in the Government, so each copy was individually addressed, and like in Ms. Lavelle's case, it would have been individually addressed to her.

Mr. **Molinari**. And sent through interoffice mail?

Mr. **Perry**. Yes, sir, right.

Mr. **Molinari**. And there is no requirement to sign for it, like we did in the State legislature? We had a book on ethics and we had to sign that we received it so we couldn't later deny having received it.

Mr. **Perry**. Yes, sir, and you have a good suggestion. When I go back, I'll do that.

[The following was subsequently received:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

29 MAR 1983

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Transmittal of Guidance on Ethics and Conflict of Interest

FROM: Gerald H. Yamada Gerald H. Yamada
Deputy General Counsel
Designated Agency Ethics Official

TO: All Deputy Counselors (Assistant Administrators, Associate Administrators, Regional Administrators, Staff Office Directors and Office Directors)

Several months ago my predecessor, Michael A. Brown, sent you a copy of the attached pamphlet, "Guidance on Ethics and Conflict of Interest." The pamphlet summarizes the conflict of interest statutes at 18 U.S.C. §§201-209 and the main principles of the EPA Standards of Conduct at 40 C.F.R. Part 3.

Since the pamphlet provides guidance which is otherwise available only by researching the United States Code, the Code of Federal Regulations and Opinions of the Attorney General and the Comptroller General, it is important that you have it available to assist you in your duties as "Deputy Counselors for Conflict of Interest" pursuant to 40 C.F.R. §3.202.

To insure that you have received a copy, I am asking you to please sign below and return this memorandum to me.

* * *

FROM: ______________________________
(Name)

______________________________
(Position)

TO: Gerald H. Yamada
Designated Agency Ethics Official (LE-131)

I have received the "Guidance on Ethics and Conflict of Interest."

Date: ______________________________

Mr. MOLINARI. Fine. I appreciate that very much.

Mr. PERRY. I think it is a very good idea and we are going to get a return receipt on these.

Mr. MOLINARI. I am happy we are getting somewhere today, Mr. Perry.

Early in 1982, a headquarters task force was created to expedite notification letters. Do you remember that?

Mr. PERRY. Yes, sir.

Mr. MOLINARI. Is that task force still in operation?

Mr. PERRY. That responsibility has been given to the program office. It was too much of a resource drain on my staff to be writing out these notification letters, and we have now referred that responsibility to the program.

Mr. MOLINARI. Your answer is no, then, I presume?

Mr. PERRY. That is correct.

Mr. MOLINARI. Isn't it a fact that the task force got out approximately 1,000 letters in less then 90 days starting from scratch, and you had an automated system in place as a result of that?

Mr. PERRY. They did get out a lot of letters, I recall.

Mr. MOLINARI. Why did you disband it then?

Mr. PERRY. It was done more efficiently in the program, because those letters had to be properly written; they had to notify the proper responsible parties, find the responsible parties, the address of responsible parties, the contents of that letter.

Let me check with my staff now.

I was just informed, Mr. Molinari, that that was done by the task force and was put together by my predecessor, Mr. Sullivan. Those were form letters, and what we wanted to do was get them more tailored to the cases.

The program could more properly do that, because we were concerned that in our 107 collection actions that a judge would want to know before he hit a responsible party with a cleanup cost whether he had the opportunity prior to notification that he was going to be responsible for this cleanup. That was why I wanted those notifications to be as accurate as possible.

Mr. MOLINARI. I can understand that.

Didn't you have problems with some responsible parties or potentially responsible parties because of a lack of adequate notification?

Mr. PERRY. I am sure we probably have. I don't know exactly what case, but I am sure we have had that problem.

Mr. MOLINARI. You don't recall any cases where there were difficulties in prosecution because proper notification was not given?

Mr. PERRY. We have never had that problem.

It is not really a legal problem required by the statute. It is more of an equitable policy issue that we feel would give us a better case, to have given the responsible party notification than not to have, but the law itself doesn't precisely require that a notification be sent before we would require a party to——

Mr. MOLINARI. Getting back to my question, were there any cases where the Government's case was prejudiced because of lack of adequate notification? Your answer would be no?

Mr. PERRY. That is correct, it would be no, to the best of my knowledge.

Mr. MOLINARI. OK.

Would you provide the subcommittee an enforcement status report on the 419, priority sites, including the status of the identification of responsible parties, whether notification letters were issued, the response time, and the stage of negotiations?

Mr. **Perry**. Yes, sir, we would be happy to.

[The information received from Mr. Perry follows:]

Interim Priority List Sites for Which Notice (revised
Letters Have Been Sent 3/1/83)

| Region | Site | Location | Date | # Letters Sent |
|---|---|---|---|---|
| I | Mark Phillips Trust | Woburn, Mass | 04/30/81 | 5 |
| | | | 11/20/81 | |
| | | | 01/28/82 | |
| I | Ottati & Goss | Kingston, N.H. | 11/16/81 | 9 (total) |
| | | | 11/ /82 | (7) |
| I | Picillo | Coventry, R.I. | 12/15/81 | 13 |
| I | Sylvester | Nashua, N.H. | 11/20/81 | 6 |
| I | Nyanza | Ashland, Mass | 03/04/82 | 23 |
| I | Charles George | Tynapborough, Ma | 03/05/82 | 6 |
| I | Winthrop | Winthrop, Ma. | 03/05/82 | 1 |
| I | Keefe | Epping N.H. | 03/05/82 | 9 |
| | | | 08/24/82 | 63 (total: 168 for Keefe |
| | | | 09/02/82 | 14 |
| | | | 10/08/82 | 82 |
| I | Pine St. Canal | Burlington Vt. | 03/05/82 | 5 |
| I | Western Sand & Gravel | Burrellville, RI | 03/05/82 | 8 |
| I | Davis Liquid Chemical | Smithfield, RI | 03/05/82 | 5 |
| I | Resolve | N. Dartmouth Ma. | 03/02/82 | 3 |
| II | Prices | Atlantic City, N.J. | 02/04/82 | 44 |
| II | Kin-Buc | Edison N.J. | 12/29/81 | 7 |
| | | | 07/22/82 | 4 |
| II | PAS-OSWEGO | Oswego, N.Y. | 11/06/81 | 4 |
| | | | 02/18/82 | 79 |
| II | Old Bethpage | Oyster Bay, N.Y. | 03/18/82 | 4 |
| II | Goose Farm | Plumstead, N.J. | 08/19/82 | 1 |
| II | Upper Freehold | Monmouth County, N.J. | 08/19/82 | 2 |
| II | Spence Farm | Plumstead, N.J. | 08/19/82 | 2 |
| II | Pijack Farm | Ocean County, N.J. | 08/19/82 | 2 |
| II | Burnt Fly Bog | Marlboro N.J. | 03/18/82 | 8 |
| II | D'Impero Property | Atlantic County, N.J. | 03/18/82 | 2 |
| | | | 08/20/82 | 1 |
| II | Love Canal | Niagra Falls, NY | 04/16/82 | 1 |
| II | Li Pari Landfill | Gloucester County, NJ | 03/23/82 | 6 |
| | | | 08/06/82 | 6 |
| II | Niagra County Landfill | Wheatfield, Ny. | 04/07/82 | 8 |
| II | York Oil | Moira, NY | 08/24/82 | 3 |
| | | | 10/ /82 | 1 |
| II | Batavia Landfill | Batavia, NY | 04/07/82 | 7 |
| | | | 11/12/82 | 3 |
| II | Lone Pine Landfill | Freehold, NJ | 07/06/82 | 15 |
| | | | 09/03/82 | 1 |
| II | Syncon Resin, Co. | South Kearney, NJ | 08/13/82 | 2 |
| II | Olean Well Field | Olean, NY. | 10/15/82 | 1 |
| II | Kentucky Ave Well Field | Elmira, NY. | 10/ /82 | 2 |
| II | Swope Oil | Pennsauken, NJ | 11/01/82 | 2 |
| II | Sinclair Oil | Wellsville, NY | 03/07/83 | 1 |

| | | | | |
|---|---|---|---|---|
| III | Tybouts | New Castle, Del | 02/ /82 | 3 |
| III | Bruin Lagoon | Bruin, PA | 10/26/81 | 1 |
| III | Lehigh Electric | Old Forge PA | 11/05/81 | 2 |
| III | ABM-Wade | Chester, Pa. | 09/12/81 | 38 |
| III | McAdoo | McAdoo, PA | 02/10/82 | 20 |
| III | Matthews Electroplating | Viewpoint Hts Va. | 02/23/82 | 5 |
| III | Lord Schope | Girard Township, Pa. | 03/24/82 | 2 |
| III | Hranica | Butler County Pa. | 04/14/82 | 2 |
| III | Stauffer Chemical | Delaware City De. | 03/18/82 | 1 |
| III | Lindane Dump | Harrison Tnship, Pa. | 04/16/82 | 2 |
| III | Harvey-Knott Landfill | Kirkwood. De. | 08/17/82 | 4 |
| III | Chemical Metals | Baltimore, Md. | 03/x6/82 | 1 |
| III | Drake Chemical | Lockhaven, Pa. | 10/29/82 | 3 |
| IV | Bluff Road | Columbia, SC | 12/14/81 | 22 |
| IV | Luminous Processes | Athens, GA | 12/22/81 | 7 |
| IV | Whitehouse Oil Pits | Whitehouse, Fla. | 02/23/82 | 1 |
| | | | 03/05/82 | 2 |
| IV | Hollinsworth | Ft. Lauderdale, Fla. | 03/05/82 | 2 |
| IV | Reeves | Tampa, Fla. | 03/05/82 | 1 |
| IV | American Creosote | Pensacola, Fla. | 03/05/82 | 1 |
| IV | Alpha Chemical | Galloway, Fla. | 03/05/82 | 1 |
| IV | Pioneer Sand | Warrington, Fla. | 03/05/82 | 2 |
| IV | Biscayne Aquifer (Miami Drum) | Miami, Fla. | | |
| IV | Tower Chemical | Clermont, Fla. | 03/05/82 | 3 |
| IV | Picketville Road | Jacksonville, Fla. | 03/05/82 | 3 |
| IV | Biscayne Aquifer (58th Street) | Miami, Fla. | 03/05/82 | 1 |
| IV | Coleman-Evans | Whitehouse, Fla. | 03/05/82 | 2 |
| IV | Sapp Battery | Jackson County, Fla. | 03/05/82 | 4 |
| IV | A.L. Taylor Site | Brooks,Ky. | 03/05/82 | 4 |
| | | | 03/09/82 | 2 |
| | | | 08/19/82 | 15 |
| IV | Walcott Chemical | Greenville, Ms. | 03/05/82 | 1 |
| IV | North Hollywood Dump | Memphis, Tn. | 03/09/82 | 3 |
| IV | Zellwood | Orange County, Fla. | 03/09/82 | 2 |
| IV | Timberlake | Tampa, Fla. | 03/05/82 | 2 |
| IV | Broward County | Davie, Fla. | 03/05/82 | 1 |
| IV | Biscayne Aquifer (Varsol Spill) | Miami, Fla. | 03/05/82 | 1 |
| IV | Roadside PCB's | North Carolina | 05/16/82 | 5 |
| IV | Gold Coast Oil | Miami, Fla. | 03/05/82 | 1 |
| | | | 03/22/82 | 2 |
| | | | 07/22/82 | 10 |
| | | | 11/08/82 | 27 |
| IV | Harison County Site | Gynthiana, Ky | 10/ /82 | 4 |
| V | Reiley Tar | St. Louis Park, Mn. | 02/25/81 | 1 |
| V | Neal's Landfill | Bloomington Ind. | 03/16/82 | 1 |
| V | Gratiot County | St. Louis. Mi. | 03/15/82 | 1 |
| V | ACME Solvents | Morristown, Il. | 08/13/82 | 4 |
| V | Berlin-Ferro | Swartz Creek Mi. | 06/18/82 | 11 |
| V | G & H Landfill | Macomb County, Mi. | 08/20/82 | 9 |
| V | Verona Wellfield | Battle Creek, Mi. | 08/20/82 | 8 |
| V | FMC Corp. | Fridley, Mn. | 08/12/82 | 1 |
| V | Kopper's Coke | St. Paul, Mn. | 05/07/82 | 1 |
| V | A&F Materials | Greenup. Ill. | 08/19/82 | 6 |

| | | | | |
|---|---|---|---|---|
| V | National Lead/Taracorp | St. Louis, Mn. | 03/15/82 | 2 |
| V | Andover Sites | Andover, Mn. | 03/15/82 | 16 |
| V | Oakdale Dump | Oakdale Mn. | 03/15/82 | 9 |
| V | Chem Dyne | Hamilton, Oh. | 03/26/82 | 289 |
| V | Summit National | Deerfield, Oh. | 04/02/82 | 78 |
| V | Field's Brook | Ashtohula, Oh. | 03/15/82 | 14 |
| V | Seymour | Seymour Ind. | 05/14/82 | 400 |
| V | Chem & Min Reclamation | Cleveland, Oh. | 12/01/81 | 2 |
| V | Laskin Poplar | | 05/25/82 | 90 |
| V | Ott/Story/Cordova | Dalton Twp., Mi. | 10/15/82 | 3 |
| V | Wauconda Sand & Gravel | Wauconda. Il. | 10/21/82 | 1 |
| V | Northernaire Plating | Wexford Co., Mi. | 10/18/82 | 3 |
| V | Burlington Northern | Brainard Mn. | 10/05/82 | 1 |
| V | Rose Township | Oakland Co., Mi | 10/26/82 | 7 |
| V | Waste Disposal Eng. | Andover, Mn. | 11/08/82 | 1 |
| V | Rasor Tannery | Ashtabula, OH | | 2 |
| V | Old Mill Site | Rock Creek OH | | 5 |
| V | Midco I Site | Gary, Indiana | | 50 |
| V | Anaconda Rd. | Akron Oh. | 6/3/82 | 1 |
| V | Isanti | Isanti Twp. Mn | 11/12/82 | 11 |
| | | | 2/2//83 | 5 |
| V | Pembroke/Cross Brothers | Pembroke, Il. | 12/09/82 | 17 |
| V | Skilgen | Cleveland Oh. | 12/12/82 | 3 |
| VI | Motco | Lamarque, Tx. | 11/06/81 | 4 |
| VI | Bio-Ecology | Grand Prairie, Tx. | 02/10/82 | 4 |
| VI | French | Harris County, Tx. | 02/10/82 | 4 |
| VI | Allen Transformer | Ft. Smith Ark. | 12/22/81 | 1 |
| VI | Fritt Industries | Walnut Ridge, Ark. | 03/18/82 | 1 |
| VI | Mid-South | Mina Ark. | 03/18/82 | 2 |
| VI | AT & SF | Cloves, N.M. | 03/18/82 | 1 |
| VI | Tar Creek | Ottawa County. Oh. | 02/25/82 | 2 |
| VI | Crystal Chemical | Houstin, Tx. | 09/03/82 | 11 |
| VI | Bayou Sorrel | Iberville Parish, La. | 09/03/82 | 20 |
| VI | Old Inger Oil Refinery | Darrow, La. | 09/03/82 | 17 |
| VI | South Valley | Albuquerque, NM | 09/03/82 | 5 |
| | | | 09/23/82 | 4 |
| VI | Harris Site | Houston, Tx. | 09/03/82 | 3 |
| VI | Highland Acid Pits | Higland, Tx. | 09/02/82 | 1 |
| VII | Ellisville Sites | Ellisville, Mo. | 12/22/81 | 8 |
| VII | Aidex | Council Bluffs, Ia. | 11/18/81 | 7 |
| VII | Minker/Stout/Romaine | | 10/ /82 | 8 |
| VIII | Denver Radium Sites | Denver, Co. | 08/10/82 | 6 |
| VIII | Marshall Landfill | Bolder, Co. | 10/18/82 | 6 |
| VIII | Woodbury Chemical | Commerce City. Co. | 10/26/82 | 2 |

| | | | | |
|---|---|---|---|---|
| IX | Stringfellow | Riverside, Ca. | 08/25/82 | 176 |
| | | | 10/ /82 | 116 |
| IX | Mt. View Estates (Globe) | | 10/ /82 | 6 |
| IX | Iron Mountain | Ca. | 03/ /82 | 2 |
| IX | Tuscon Airport | Tuscon, Az. | 11/ /82 | 1 |
| X | Commencement Bay | Tacoma, Wa. | 02/18/82 | 12 |
| | (american Surplus) | "" | 02/18/82 | 1 |
| | (Well 12 A ) | | 04/16/82 | 8 |
| | (Tar Pits) | | 04/16/82 | 8 |
| | | | 07/ /82 | 1 |
| | | | 08/ /82 | 2 |
| | (Near Shore Tide Flats) | | 03/18/82 | 9 |
| | | | 04/07/82 | 6 |
| | | | 06/ /82 | 3 |
| | | | 03/18/82 | 3 |
| | | | 04/07/82 | 7 |
| | (other) | | 03/18/82 | 3 |
| | | | 04/07/82 | 7 |

### Notice Letters Have Also Been Issued for the Following Sites Not on the Interim Priority List

| Region | Site | Location | Date | # Letters Sent |
|---|---|---|---|---|
| II | Methyl Ethyl Keytone Spill | Hicksville, NY | 04/14/82 | 5 |
| II | Berncolors Poughkeepsie Inc. | Poughkeepsie, NY | 01/14/82 | 1 |
| III | National Wood Preservers | Havertown PA | 12/18/81 | 1 |
| IV | Caralown Site | Columbia, SC | 11/18/81 | 28 |
| IV | Old Harden County Brickyard | West Point, KY | 11/20/81 | 1 |
| IV | Lenoir Refinery | Lenoir, NC | 06/04/82 | 3 |
| IX | General Disposal Site | Santa Fe Springs, CA | 07/31/81 | 13 |

MAY 13 1983

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| I | PSC Resources | Palmer, MA | State | Judicial | No negotiations |
| I | Re-Solve | Dartmouth, MA | State | Judicial | Federal negotiations: temporarily suspended. |
| I | Silresim | Lowell, MA | State | Judicial | No negotiations |
| I | W.R. Grace | Action, MA. | Federal | Judicial | No negotiations |
| I | Solvents Recovery | Southington, Ct. | State and Federal |  | Negotiations: Start-1980 Last-1980. Consent Decree signed 2/83. |
| I | Wells G&H | East Woburn, MA |  |  | Unsuccessful negotiations ended 3/1/83. |
| I | McKin Company | Gray, ME | State | Judicial |  |
| I | O'Connor Site | Augusta, ME | State | Administrative |  |
| I | Auburn Rd. Landfill | Londonderry, NH |  |  | No negotiations |
| I | Sylvester, Nashua | Nashua, NH | State | Judicial |  |
| I | Forestdale | North Smithfield, R.I. |  |  | No Negotiations |
| I | L&RR-N. Smithfield | North Smithfield, R.I. |  |  | No Negotiations |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| I | Laurel Park, Inc. | Naugatuck, Ct. | State | Judicial | No Negotiations |
| I | Solvents Recovery System | Southington, Ct. | Federal | Judicial | Consent Decree Lodged |
| I | Yaworski | Canterbury Ct. | State | Administrative | No Negotiations |
| I | Beacon Heights | Beacon Falls, Ct. | | | No Negotiations |
| I | Baird & McGuire | Holbrook, MA. | State | Administrative | No Fed. Negotiations |
| I | Cannon Engineering | Bridgewater, MA | State | | No Negotiations |
| I | Charles-George | Tyngshoro, MA | State | Administrative | No Negotiations |
| I | Groveland Wells | Groveland, MA | Town | | No Negotiations |
| I | Hocomoco Pond | Westborough, MA | | | No Negotiations |
| I | Industri-Plex | Woburn, MA | | | Federal Negotiations |
| I | New Bedford | New Bedford, MA | Federal | Administrative | No current Negotiations |
| I | Nyanza Chem. | Ashland, MA | | | No current Negotiations |
| I | Plymouth Harbor/ Cordage | Plymouth, MA | | | No negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| I | Peterson/Puritan | Cumberland, RI | | | Negotiations Ongoing, Last: 3/21/83 |
| I | Western Sand & Gravel | Burrillville, R.I. | State | Administrative | Federal Negotiations: Temporarily suspended. |
| I | Davis Liquid | Smithfield, RI | Federal | | Informal Federal Negotiations. No resolution as of 3-28-83. |
| I | Picillo Coventry | Coventry, RI | No Federal. State pending, (Trial date 5-23-83) | | |
| I | Keefe Environmental Services (KES) | Epping, NH | | | Negotiations: First 10/82; Most recent 1/83 |
| I | Pine Street Canal | Burlington, VT | | | Federal Negotiations: Temporarily suspended. |
| I | Winthrop Landfill | Winthrop, ME | | | Federal Negotiations: Temporarily suspended. |
| I | Ottati & Goss | Kingston, NH | | | No Negotiations. |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | M&T DeLisa Landfill | Asbury Park, NJ | No enf. | | |
| II | Mannheim Avenue Dump | Galloway Township NJ | No enf. | | |
| II | Maywood Chemicals Sites | Maywood & Rochelle Pk, NJ | No enf. | | |
| II | Metaltec/Aerosystems | Franklin Township NJ | State | | |
| II | Monroe Township Landfill | Monroe Township NJ | State | Judicial | |
| II | Montgomery Housing Dev. | Montgomery Township, NJ | No enf. | | |
| II | Myers Property | Franklin Township NJ | No enf. | | |
| II | N.L. Industries | Pedricktown, NJ | State | | |
| II | Pepe Field | Boonton, NJ | No enf. | | |
| II | PJP Landfill | Jersey City, NJ | No enf. | | |
| II | Price Landfill | Pleasantville, NJ | Federal | Judicial | |
| II | Reich Farms | Dover Township NJ | State | | |
| II | Renora | Edison, NJ | No enf. | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Facet Enterprises | Elmira Heights,NY | | | Negot. Start: 2/81; Ended 2/82 |
| II | Fulton Terminals | Fulton, NY | None | | No Negotiations |
| II | GE Moreau Site | South Glens Falls NY | State | Admin. & Judicial | |
| II | Hooker- Hyde Park | Niagara Falls,NY | Fed. & State | Judicial (filed case) | Consent Decree Being Implemented. |
| II | Hooker - S Area | Niagara Falls, NY | Fed. & State | Judicial (filed case) | Negot. Start: 10/14/80; Last 3/11/83 |
| II | Hooker - 102nd Street | Niagara Falls, NY | Fed. & State | Judicial | No Negotiations |
| II | Kentucky Ave. Well-Field | Horseheads, NY | State | | Negot. Start: 12/82; Last- 2/22/83 |
| II | Love Canal | Niagara Falls, NY | Fed. & State | Judicial (Prep. for Trial) | Fed. & State Negot: Last -7/26/82 |
| II | Ludlow Sand & Gravel | Clayville, NY | None | | No Negotiations |
| II | Bridgeport Rental & Oil Services | Logan Twnshp, NJ | Federal | Judicial | Negot. Completed 6/82 (Consent Decree 8/21/82). |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Chemsol | Piscataway, NJ | No Info. | | |
| II | Comb Fill North Landfill | Mt. Olive Twnshp NJ | No. Info. | | |
| II | Comb Fill South Landfill | Chester, NJ | No Info. | | |
| II | CPS/Madison Indus. | Old Bridge Twnshp NJ | State | | |
| II | Denzer & Schafer X-Ray | Bayville, NJ | State | | |
| II | Dover Municipal Well 4 | Dover, NJ | None | | |
| II | Ellis Property | Evesham, NJ | None | | |
| II | Evor Phillips | Old Bridge, NJ | None | | |
| II | Gems Landfill | Gloucester Twnshp | State | | |
| II | Helen Kramer Landfill | Mantua, NJ | None | | |
| II | Hercules | Gibbstown, NJ | None | | |
| II | Imperial Oil | Marlboro Twnshp NJ | State | Judicial | |
| II | JIS Landfill | South Brunswick TWP, NJ | State | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Kin-Buc Landfill | Edison, NJ | Federal | Judicial | Negot.: Start-1979<br>Last - 3/1983 |
| II | Krysowaty Farm | Hillsborough, NJ | None | | |
| II | Lang Property | Pemberton Twnshp NJ | None | | |
| II | Old Bethpage Landfill | Oyster Bay, NY | State | Judicial | |
| II | Mercury Refining | Albany, NY | None | | No Negotiations |
| II | Niagara County Refuse (Landfill) | Wheatfield, NY | None | | No Negotiations |
| II | Olean Wellfield | Olean, NY | | | Only negotiations - Mid Nov. 1982 |
| II | Pollution Abatement Services | Oswego, NY | Federal | Judicial | No Negotiations |
| II | Port Washington Landfill | Port Washington, NY | None yet | | No Known Fed. Negot. State Negot.-Admin. Order On Consent 2/3/83. |
| II | Ramapo Landfill | Ramapo, NY | State Enf. | | |
| II | Sinclair Refinery | Wellsville, NY | None | | Negot. Start-8/82; Last -2/7/83. |
| II | Solvent Savers | Lincklaen, NY | None | | No Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Syosset Landfill | Oyster Bay, NY | None | | No Negotiations |
| II | Vestal Water Supply | Vestal, NY | | | No Known Negot. |
| II | Wide Beach Development | Brant, NY | None | | No Negotiations |
| II | York Oil Company | Moira, NY | | | Only Negot. 3-8-83 |
| II | LiPari Landfill | Pittman, NJ | Federal | Judicial-Resulted in Consent Decree. | Negot: Start-1-83<br>Last - 2-83 |
| II | Lone Pine Landfill | Freehold, NJ | State Enf. Criminal | Judicial | No Known Negot. |
| II | Barceloneta Landfill | Florida Afuera, PR | None | | No Negotiations |
| II | Frontera Creek | Rio Abajo | None | | No Negotiations |
| II | GE Wiring Devices | Juana Diaz, PR | None | | No Negotiations |
| II | Juncos Landfill | Juncos, PR | None | | No Negotiations |
| II | RCA Del Caribe | Barceloneta, PR | None | | No Negotiations |
| II | Batavia Landfill | Batavia, NY | | | Negot. Start -11/22/82; Last 2/3/83 |
| II | Brewster Well Field | Brewster, NY | None | | No Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Ringwood Mines/ Landfill | Ringwood, NJ | None | | |
| II | Rockaway Boro Wellfield | Rockaway Boro, NJ | None | | |
| II | Rockaway Township Wells | Rockaway Twnshp NJ | None | | |
| II | Rocky Hill Municipal Well | Rocky Hill, NJ | None | | |
| II | Roebling Steel Co. | Florence, NJ | None | | |
| II | Sayreville Landfill | Sayreville, NJ | None | | |
| II | Scientific Chemical Processing | Carlstadt, NJ | None | | |
| II | Sharkey Landfill | Parsippany, Troy Hls, NJ | None | | |
| II | Swope Oil and Chemical | Pennsauken, NJ | State | Administrative | |
| II | Syncon Resins | South Kearney, NJ | Federal | Administrative | Negotiations Held: Start - OCT.1982; Most Recent - FEB. 1983 |
| II | Toms River Chemical | Dover, NJ | None | | |
| II | Universal Oil Products | East Rutherford NJ | State | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | US Radium | Orange, NJ | None | | |
| II | Vineland State School | Vineland, NJ | None | | |
| II | Williams Property | Swainton, NJ | None | | |
| II | A.O. Polymer | Sparta, NJ | No Information | | |
| II | American Cyanamid | Bound Brook, NJ | State | | |
| II | Asbestos Dump | Millington, NJ | State | Administrative | |
| II | Beachwood/Berkley Wells | Berkley, NJ | No Information | | |
| II | Bog Creek Farm | Howell Township, NJ | No Information | | |
| II | Brick Township Landfill | Brick Township NJ | No Information | | |
| II | Burnt Fly Bog | Marlboro Township NJ | State | | |
| II | Caldwell Trucking | Fairfield, NJ | No Information | | |
| II | Chemical Control | Elizabeth, NJ | Fed. & State | Judicial | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| II | Friedman Property (Upper Freehold) | Freehold, NJ | None | | Negot. Start:7/7/82/ Ended 9/82 |
| II | Goose Farm | Plumsted, NJ | No Enf. Yet | | Negot. Start:7/7 82; Last 9/82 |
| II | Pijack Farm | Plumsted, NJ | No Enf. Yet | | Negot. Start:7/7 82; Last 9/82 |
| II | Spence Farm | Plumsted, NJ | No Enf. Yet | | Negot. Start:7/7 82; Last 9/82 |
| II | D'Imperio Property | Atlantic City,NJ | | | Federal Negotiations. |
| II | King Of Prussia | Winslow, Twnshp NJ | None | | Federal Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| III | Army Creek | New Castle, De | None | | |
| III | New Castle Steel Site | New Castle, De | None | | |
| III | Tybouts Corner | New Castle County De | Fed. | | Negot. held - Start Feb. 1982 Most Recent Mar. 1983 |
| III | Wildcat Landfill | Dover, De | None | | |
| III | Limstone Road Site | Cumberland, Md | State | | |
| III | Middletown Road Dump | Annapolis, Md | State | | |
| III | Sand, Gravel & Stone | Elkton, Md | State | Administrative Action | |
| III | Fischer & Porter | Warminster, Pa | Federal | Judicial | Negot. Held: Dec. 1982 |
| III | Lackawanna Refuse | Old Forge, Pa | Federal | Judicial (criminal) | Criminal plea bargaining: Most recent Mar. 1983 |
| III | U.S. Titanium | Piney River, Va | State | Judicial | |
| III | Metal Bank | Philadelpha, Pa | Federal | Judicial | Negot. have been held: most recent - Dec. 1982 |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| III | Palmerton Zinc Pile | Palmerton, PA | None | | |
| III | Stanley Kessler | King of Prussia, Pa | Federal | | Negot. held: First July, 1981; Most Recent Jan. 1983 |
| III | Chisman | York County, Va | None | | |
| III | Brodhead Creek (Union Gas & PP&L) | Stroudsburg, Pa | Federal(Both) | Judicial(Both): Union Gas-$107, Cost Recovery Ref'd to DOJ | Negot. (PP&L):First 1/22/82; Last 2/22/82; (Union Gas): one session held. |
| III | Fike Chemical | Nitro, WV | State (complete) | | Fed. Negot: ended 5/82 (Signed Consent Decree) 8/82 |
| III | Lehigh Electric | Old Forge, Pa | Federal | Judicial: Trial Date Set April '83 | Negot.: First - 7/27/81; Most Recent 3/16/83 |
| III | Matthews (Electroplating) | Roanoke County, Va | No Fed. Enf. Planned State Enf. | State Admin. Action | No Negotiations |
| III | McAdoo | McAdoo, PA | State Enf. (completed ag former site owner) | State Judicial Issued ag. former site owner) | Fed. Negot. First: 9/80; Last Mtg. 11/28/82 |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| III | Kimberton | Kimberton, Pa | None | | |
| III | Osborne | Grove City, Pa | Status yet to be determined | | |
| III | Wade (ABM) | Chester, Pa | Federal | Consent Agreement | Pursuing settlement discussions |
| III | Saltville Waste Disposal | Saltville, Va | State | | |
| III | Haranica | Buffalo, Pa | State | | |
| III | Drake Chem. Inc. | Lock Haven, Pa | Federal | | Federal Negotiations. |
| III | Lindane Dump | Harrison Twnshp, Pa | State | | |
| III | Lord Shope | Girand Twnship,Pa | State | | |
| III | Follansbee Sludge Fill | Follansbee, WV | No Info.Avail | | |
| III | Leetown Pesticide Pile | Leetown, WV | State | | State Negot. |
| III | De City PVC Plant | Delaware City, De | Federal | | Federal Negotiations. |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| III | Malvern TCE Site | Malvern, Pa | None | Volutary cleanup by owner | |
| III | Moyer Landfill | Lower Providence Twp, Pa | Federal & State | Fed Judicial (completed) State Jud. (in progress) | State Negot. |
| III | Old City of York Landfill | Seven Valleys, Pa | None | | |
| III | Presque Isle | Erie, Pa | None | | |
| III | Resin Disposal | Jefferson, Pa | None | | |
| III | Voortman | Upper Saucon Twp | No Inf.Avail. | | |
| III | Westline | Westline, Pa | No Inf.Avail. | | |
| III | Blosenski Landfill | West Chester Twp Pa | None | | |
| III | Craig Farm Drum Site | Parker, Pa | None | | |
| III | Douglasville Disposal | Douglasville, Pa | None | | |
| III | Havertown PCP Site (National Wood Preservers) | Haverford, Pa | State & Fed. | State Judicial (Complete) Fed. Not yet determined | Fed. Negotiations (1st Phase Ended) 1/19/82; State Negot. ongoing |
| III | Heleva Landfill | West Ormrod, Pa. | State | Judicial - Signed Consent Decree-1980 | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| III | Del. Sand & Gravel | New Castle, De | | | |
| III | Harvey Knott Drum Site | Kirkwood, De | Federal & State Response | | |
| III | Tris Spill Site | New Castle, De | Status yet to be determined | | |
| III | Bruin Lagoon | Bruin Boro, Pa | State & Fed. Response | | |
| III | Centre County Kepone | State College, Pa | State | | |
| III | Enterprise Avenue | Philadelphia, Pa | City | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IV | Murray Ohio Dump | Lawrenceburg, TN | | | No Negotiations |
| IV | North Hollywood Dump | Memphis, TN | | | Negotiations: 8/81 |
| IV | Velsicol Chemical Co. | Toone, TN | | | No Negotiations |
| IV | Distler Brickyard | West Point, KY | | | No Negotiations |
| IV | Distler Farm | Jefferson Cty,KY | | | No Negotiations |
| IV | Lee's Land Landfill | Louisville, KY | | | No Negotiations |
| IV | Newport Dump | Newport, KY | | | No Negotiations |
| IV | Plastifax | Gulfport, MS | | | Negot: First-7/82; Last - 10/82 (Ended). |
| IV | Chemtronics, Inc. | Swannanoa, NC | | | No Negotiations |
| IV | Martin Marietta, Sodyeco | Charlotte, NC | | | Negot: 11/82 |
| IV | PCB Spills | 210 Miles of Roads, NC | | | Negot: First-5/82<br>Last - 5/82 |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IV | Mowbray Engineering | Greenville, AL | | | No Negotiations |
| IV | Perdido Groundwater Contamination | Perdido, AL | | | Negotiations: 2/83 |
| IV | Triana, Tenn. River | Limestone & Morgan, AL | | | Negotiations: 10/81 to Present |
| IV | Alpha Chemical | Galloway, FL | | | Negotiations: 8/82 |
| IV | American Creosote | Pensacola, FL | State/Federal Response | | Negotiations: First — 10/82; Most Recent 12/82 |
| IV | Brown Wood | Live Oak, FL | | | No Negotiations |
| IV | A.L. Taylor | Brooks, KY | | | No Negotiations |
| IV | Airco | Calvert City, KY | | | No Negotiations |
| IV | B.F. Goodrich | Calvert City, KY | | | No Negotiations |
| IV | Alpha Chemical | Galloway, FL | Federal: No decision as to enf. | | Negotiations held: 8/9/82 |
| IV | SCRDI Bluff Road | Columbia, SC | Federal: Filed | | Settlement Agreement |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IV | Coleman Evans | Whitehouse, FL | | | Negot: First-6/82<br>Last - 11/82 (Ended). |
| IV | Davie Landfill | Davie, FL | | | No Negotiations |
| IV | Florida Steel | Indiantown, FL | | | No Negotiations |
| IV | Gold Coast Oil | Miami, FL | Federal | Potential Admin. - §106 | Negot:First-11/82;<br>Last-3/83 |
| IV | Hollingsworth | Fort Lauderdale, FL | State & Fed. Response | | Federal Negotiations |
| IV | Kassauf-Kimerling | Tampa, FL | Federal | | Negot:First-6/82;<br>Last-2/83 |
| IV | Miami Drum | Miami, FL | | | No Negotiations |
| IV | Munisport | North Florida, FL | | | No Negotiations |
| IV | NW 58th Street | Hialeah, FL | | | No Negotiations |
| IV | Parramore Surplus | Mount Pleasant, FL | | | No Negotiations |
| IV | Pickettville Rd Landfill | Jacksonville, FL | | | Negotiation:6/82 |
| IV | Pioneer Sand | Warrington, FL | | | No Negotiations |
| IV | Reeves Se Galvanizing | Tampa, FL | | | No Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IV | Sapp Battery | Cottondale, FL | | | No Negotiations |
| IV | Schuylkill Metals | Plant City, FL | | | No Negotiations |
| IV | Sherwood Medical | Deland, FL | | | No Negotiations |
| IV | Taylor Road Landfill | Seffner, FL | | | Negot:First-10/80; Last-11/82 |
| IV | Tower Chemical | Clermont, FL | | | Negot: 5/82 |
| IV | Varsol Spill | Miami, FL | | | No Negotiations |
| IV | Whitehouse Oil Pits | Whitehouse, FL | | | No Negotiations |
| IV | Zellwood Groundwater Contam | Zellwood, FL | | | No Negotiations |
| IV | 62nd Street Dump | Tampa, FL | | | No Negotiations |
| IV | Carolawn, Inc. | Fort Lawn, SC | | | No Negotiations |
| IV | SCRDI Bluff Road | Columbia, SC | | | Negotiations: Consent Decree |
| IV | SCRDI Dixiana | Cayce, S.C. | | | No Negotiations |
| IV | Amnicola Dump | Chattanooga, TN | | | No Negotiations |
| IV | Galloway Ponds | Galloway, TN | | | No Negotiations |
| IV | Lewisburg Dump | Lewisburg, TN | | | No Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IV | Murray Ohio Dump | Lawrenceburg, TN | | | No Negotiations |
| IV | North Hollywood Dump | Memphis, TN | | | Negotiations: 8/81 |
| IV | Velsicol Chemical Co. | Toone, TN | | | No Negotiations |
| IV | Distler Brickyard | West Point, KY | | | No Negotiations |
| IV | Distler Farm | Jefferson Cty,KY | | | No Negotiations |
| IV | Lee's Land Landfill | Louisville, KY | | | No Negotiations |
| IV | Newport Dump | Newport, KY | | | No Negotiations |
| IV | Plastifax | Gulfport, MS | | | Negot: First-7/82; Last - 10/82 |
| IV | Chemtronics, Inc. | Swannanoa, NC | | | No Negotiations |
| IV | Martin Marietta, Sodyeco | Charlotte, NC | | | Negot: 11/82 |
| IV | PCB Spills | 210 Miles of Roads, NC | | | Negot: First-5/82 Last - 5/82 |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Duell & Gardner Landfill | Muskegon, MI | | | |
| V | Allied Chemical | Ironton, OH | | | State Negotiations |
| V | Arcanum Iron & Metal | Arcanum, OH | | | State Negotiations |
| V | Big D Campgrounds | Kingsville, OH | | | |
| V | Bowers Landfill | Circleville, OH | | | |
| V | Buckeye Reclamation | St. Clairsville, OH | | | |
| V | Chem Dyne | Hamilton, OH | Federal and State | Judicial | |
| V | Coshocton City Landfill | Coshocton, OH | | | |
| V | E.H. Schilling Landfill | Ironton, OH | | | |
| V | Fields Brook | Ashtabula, OH | | | |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | National Lead Taracorp | St. Louis Park, MI | State | Judicial | No Federal Negotiations. |
| V | New Brighton | New Brighton/ Arden, MN | | | |
| V | Oakdale | Oakdale, MN | | | State and Federal Negotiations |
| V | Reilly Tar | St. Louis, MN | Federal and State | Judicial | No Federal Negotiations. |
| V | South Andover Site | Andover, MN | | | |
| V | Waste Disposal Engineering | Anoka County, MN | | | |
| V | A&F Materials | Greenup, IL | Federal and State | | Federal Negotiations Suspended. |
| V | ACME Solvent/ Morristown | Winnebago, IL | | | No Negotiations |
| V | Belvidere | Belvidere, IL | | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | U.S. Aviex | Niles, MI | | | State Negotiations |
| V | Velsicol Michigan | St. Loius, MI | Federal and State | Judicial | |
| V | Verona Well Field | Pennfield Township, MI | | | Federal Negotiations:First 10/82 |
| V | Wash King Laundry | Pleasant Plains TWP, MI | | | |
| V | Whitehall Wells | Whitehall, MA | | | |
| V | Burlington Northern | Brainerd/Baxter, MN | | | Federal and State Negotiations |
| V | FMC | Fridley, MN | | | State and Federal Negotiations<br>Voluntary Agreement |
| V | Kopper's Coke | St. Paul, MN | | | State Negotiations |
| V | Lehillier | Lehillier/Mankota MN | | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Wayne Waste Oil | Columbia City, IN | | | State negotiations |
| V | Wedzeb, Inc | Lebanon, IN | | | State negotiations |
| V | Auto Ion | Kalamazoo, MI | | | |
| V | Berlin & Farro | Swartz Creek, MI | State | Judicial | |
| V | Butterworth Landfill | Grand Rapids, MI | | | |
| V | Cemetary Dump Site | Rose Township, MI | | | |
| V | Charlevoix Municipal Well | Charlevoix, MI | | | |
| V | Chem Central | Grand Rapids, MI | | | State Negotiations |
| V | Clare Water Supply | Clare, MI | | | |
| V | Cliff/Dow Dump | Marquette, MI | | | State Negotiations |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Byron Salvage Yard | Ogle County, Il | | | |
| V | Cross Bros/Pembroke | Pembroke, IL | | | Federal Negotiations: suspended. |
| V | Galesburg/Koppers | Galesburg, IL | | | State Negotiations |
| V | Johns-Manville | Waukegan, IL | | | |
| V | Lasalle Electric Utilities | La Salle, IL | State | Judicial | |
| V | Outboard Marine Corp. | Waukegan, Il | State and Federal | | |
| V | Velsicol Illinois | Marshall, IL | State | Judicial | |
| V | Wauconda Sand & Gravel | Wauconda, IL | State | | Federal Negotiations: Temporarily suspended. |
| V | Envirochem | Boone County, IN | State | Judicial | Federal Negotiations. |
| V | Fisher Calo | Kingsbury, IN | Federal | Judicial | |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Mason County Landfill | Ludington, MI | | | |
| V | McGraw Edison | Albien, MI | | | State Negotiations |
| V | Northernaire Plating | Cadillac, MI | | | |
| V | NOVACO Industries | Temperance, MI | | | |
| V | Organic Chemicals | Grandville, MI | | | State Negotiations |
| V | Ossineke | South Ossineke, MI | | | |
| V | Ott/Story/CORDOVA | Muskegon, MI | | | No Negotiations |
| V | Packaging Corp. of America | Filer City, MI | | | No Federal Negotiations |
| V | Petoskey Muncipal Wells | Petoskey, MI | | | |
| V | Rasmussen's Dump | Brighton, MI | | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Forest Waste Products | Otisville, MI | | | |
| V | Grand Traverse Overall Supply Co. | Greilickville, MI | | | State Negotiations |
| V | Gratiot Co. Golf Course | St. Louis, MI | Federal and State | Judicial | |
| V | Hedblum Industries | Oscoda, MI | | | |
| V | Ionia City Landfill | Ionia, MI | | | |
| V | K&L Ave. Landfill | Kalamazoo, MI | | | |
| V | Kentwood Landfill | Kentwood, MI | | | State Negotiations |
| V | Liquid Disposal Inc. | Utica, MI | State and Federal | Judicial | |
| V | Littlefield Township Dump | Oden, MI | | | State Negotiations |
| V | Gratiot County Landfill | St. Louis, MI | Federal and State | Judicial | |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Lake Sandy Jo | Gary, IN | | | |
| V | Lemon Lane Landfill | Bloomington, IN | Municipal | Judicial | |
| V | Main Street Well Field | Elkhart, IN | | | State Negotiations |
| V | Marion (Bragg) Dump | Marion, IN | | | |
| V | MIDCO I | Gary, IN | Federal and State | Judical | |
| V | Neal's Landfill | Bloomington, IN | Federal and State | Judicial | Negotiations ongoing. |
| V | Ninth Ave. Dump | Gary, IN | Federal | Judicial | |
| V | Parrot Road | Allen County, IN | | | |
| V | G&H Landfill | Utica, MI | | | Federal Negotiations: Responsible parties made inadequate offer in Dec. 82 and region turned down. |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Fultz Landfill | Byesville, OH | | | |
| V | Nease Chemical | Salem, OH | | | State Negotiations |
| V | New Lyme Landfill | Dodgeville, OH | | | |
| V | Poplar Oil | Jefferson, OH | Federal | Judicial | Federal Negotiations: Start - 7/82. |
| V | Pristine | Reading, OH | State | Judicial | |
| V | Skinner Landfill | West Chester, OH | | | |
| V | Summit National | Deerfield, OH | State | Judicial | |
| V | Van Dale Junkyard | Marietta, OH | | | |
| V | Zanesville Well Field | Zanesville, OH | | | State Negotiations |
| V | Electrovoice | Buchanan, MI | | | State Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Rose Township Dump | Rose Township, MI | State | Judicial | Federal Negotiations: suspended. |
| V | SCA Independent Landfill | Muskegon, MI | | | State Negotiations |
| V | Shiawassee River | Livingston County, MI | | | |
| V | Southwest Ottawa Landfill | Park Township, MI | | | State Negotiations |
| V | Sparta Landfill | Sparta, MI | | | State Negotiations |
| V | Spartan Chemical Company | Wyoming, MI | | | State Negotiations |
| V | Spiegelburg Landfill | Brighten, MI | | | |
| V | Springfield Township Dump | Davisburg, MI | | | |
| V | Tar Lake | Mancelona, MI | | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| V | Liquid Disposal, Inc. | Utica, MI | Federal | Federal Bankruptcy Court Claim filed 1-13-83 | No Negotiations yet |
| V | Oadkale | Oakdale, MN | | 106 Order on Consent (Not final) | Order near final completion - bet. EPA, 3M and State (as of 3/28/83). |
| V | Seymour | Seymour, IN | Federal | Judicial | Federal, State and local Negotiations (Surface) First 8/82; Last 11/82<br>No Negotiations with companies for sub-surface |
| V | Rock Creek/ Jack Webb | Rock Creek, OH | Federal §107 CERCLA-Planned | (Planned)Judicial | Negotiations (Early 1982) |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VI | Vertac | Jacksonville, AK | Federal | Consent Decree | |
| VI | Bayou Bonfouca | Slidell, LA | None | | |
| VI | Bayou Sorrel | Bayou Sorrel, LA | | | 1st Meeting w. generators Set for 4/15/83 |
| VI | Cleve Reber | Sorento, LA | Fed. & State | | No Negot. Planned Yet |
| VI | Highlands | Highland, TX | Fed. & State | Judicial - Cost Recovery | |
| VI | Triangle Chemical | Orange County,TX | Federal | Bankruptcy Court: Proof of Claim & Appl. for administ. expenses filed. | |
| VI | ATSF | Clovis, NM | Federal | Judic. or Admin. not determined yet | Negotiations Ongoing |
| VI | So. Valley | Albuquerque, NM | Fed. Response | | Negotiations Ongoing |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VI | Gurley Pit | Edmondsen, AK | Federal | Judic. or Admin. not determined yet | Negotiations: - next 4/5/83 |
| VI | Criner/Hardage | Criner, AK | Federal | Judicial - Filed Action | |
| VI | Crystal Chemical | Houston, TX | Federal | Bankruptcy Ct. - Proof of Claim Filed (1/20/83). | |
| VI | Homestake | Milan, NM | None | | Negot.: First - 12/11/80; most recent - 2/8/83 |
| VI | United Nuclear Corp. | Churchrode, NM | Federal | No Decision yet - Judicial or Admin. | Negot.: First - 2/19/82; Ended - 12/17/82 |
| | | | | | |

# NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VI | French, LTD. | Crosby, TX | None | | |
| VI | MOTCO | La Marque, TX | Federal | Judicial | Negotiations held: 3/24/83 |
| VI | Sike Disposal Sites | Crosby, TX | None | | |
| VI | Old Linger | Darrow, LA | None | | No negotiations |
| VI | Harris (Farley) | Houston, TX | Federal | Judicial or Admin.- not determined yet | Negotiations |
| VI | Tar Creek | Ottawa County, Okla. | None | | No negotiations held. |
| VI | Bio Ecology | Grand Prairie, TX | None | | |
| VI | Cecil Lindsey | New Post, Ark. | No Info. Available | | |
| VI | Frit Industries | Walnut Ridge, AK | Federal | Admin.: §106 Order on Consent - signed | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VII | Arena 1 (Dioxin) | Moscow Mills, MO | Federal | Admin. Consent Order under §106 considered; Judicial - for cleanup | Negotiations: 1/19/83 |
| VII | Arena 2: Fills 1 & 2 | Imperial, MO | Federal | Admin. Consent Order under §106 considered; Judicial - for cleanup | Negotiations: 1/19/83 |
| VII | Ellisville Site | Ellisville, MO | Federal | Judicial - Cost Recovery Referral to DOJ: 3/25/83. | Negotiations: First - 1/26/82; Last - ongoing. |
| VII | Fulbright Landfill | Springfield, MO | None | | |
| VII | Aidex Corp. | Council Bluffs, IA | Federal | Judicial: Fed. Bank Ct. & Dist. Ct. (filed case) | |
| VII | hillips Chemical | Beatrice, NE | Federal | Administrative | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VII | Arkansas City Dump | Arkansas City, KS | | | |
| VII | Doepke Disposal, Holiday | Holiday, KS | None | | |
| VII | John's Sludge Pond | Wichita, KS | Federal | Admin. | Negotiations held: 2/23/83. |
| VII | Tar Creek Cher. Co. | Cherokee County, KS | None | | |
| VII | Syntex Facility | Verona, MO | Federal | Admin. Consent Order - 8/6/82 (§3013) | Negotiations held: 7/30/82. |
| VII | Phillips Chemical | Beatrice, NE | | | |
| VII | DICO | Des Moines, IA | None | | |
| VII | LaBounty Site | Charles City, IA | Federal | C.W.A. Consent Order: Remedial action. | |

## NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VIII | Silver Bow Creek | Silver Bow/ Deer Lodge, Mt | | | No Negotiations |
| VIII | Arsenic Trioxide Site | Southeastern, ND | | | No Negotiations |
| VIII | Baxter/Union Pacific | Laramie, Wyonimg | Federal & State | | Federal Negotiations have not led to a resolution as of 3-28-82. |
| VIII | Whitewood Creek | Whitewood, SD | Federal | | Voluntary agreement to do study - plan finalized 8-82. |
| VIII | Sand Creek | Commerce City, CO | | | No Negotiations |
| VIII | Rose Park Sludge Pit | Salt Lake City, UT | | | Voluntary Agreement for Remedial Investigation concluded in 10-82 with City, State & EPA. First Negotiation 2/82<br>Last Negotiation 10/82 |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| VIII | Calif. Gulch | Leadville, CO | | | No resolution as of 3/28/83 |
| VIII | Central City Clear Creek | Idaho Springs, CO. | | | No Negotiations |
| VIII | Denver Radium Site | Denver, CO | | | No Negotiations |
| VIII | Marshall Landfill | Boulder, CO | Federal | 106 Order on Consent (Not Final) | Order Negotiated but not final as of 3-28-83 |
| VIII | Woodbury Chemical | Commerce City, CO. | | | No Negotiations |
| VIII | Libby Ground Water | Libby, Mt. | Federal | 106 Order on Consent (Not Final) | Order Negotiated by Region but not final as of 3-28-83 |
| VIII | Anaconda-Anaconda | Anaconda, Mt. | Federal | | Voluntary Agreement to do study finalized in negotiations 10-82 (this phase complete). |
| VIII | Milltown | Milltown, Mt. | | | No Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IX | Iron Mountain Mine | Redding, CA | State | State Judicial | No Federal negotiations. |
| IX | Aerojet | Rancho Cordova, CA | State Enf. | Judicial | No Fed. negot.; State Negot. - since 1980. |
| IX | PCB Warehouse | North Marianas, CM | None | | |
| IX | Taputimu Farms | American Samoa (AS) | None | | |
| IX | Celtor Chem. | Hoopa, CA | State | | |
| IX | Coast Wood Preserving | Ukiah, CA | State | | |
| IX | Jibboom Junkyard | Sacramento, CA | None | | No Negot. |
| IX | Liquid Gold | Richmond, CA | None | | No Negot. |
| IX | McColl | Fullerton, CA | Federal | | Voluntary Agreement for FIS. |
| IX | Mt. View Mobile Home Estates | Globe, AZ | | | No Federal Negotiations |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| IX | MGM Brakes | Cloverdale, CA | State | | |
| IX | Purity Oil Sales | Fresno, CA | None | | |
| IX | Selma Pressure Treating | Fresno, CA | State | | |
| IX | Stringfellow | Glen Avon, CA | Federal - Complaint to be filed 3/83. | | Phase 1 - Pre-Litigation Settlement negotiations completed. |
| IX | Indian Bend Wash. Area | Scottsdale, AZ | None | | No Negot. |
| IX | Kingman Airport | Kingman, AZ | None | | No Negot. |
| IX | Litchfield Airport | Goodyear, AZ | None | | No Negot. |
| IX | 19th Ave. Landfill | Phoenix, AZ | State | | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| X | Com. Bay, S. Tacoma Channel | Tacoma, WA | Federal | Judicial - Cost Recovery - Referred to DOJ - Oct. 1982. | American Surplus Negotiations - Not Fruitful - Ended. |
| X | Colbert Landfill | Spokane, WA | None | | |
| X | Frontier Hard Chrome | Vancouver, WA | State | Judicial | |
| X | Harbor Island Lead | Seattle, WA | None | | |
| X | FMC Yakima | Yakima, WA | | | Negot. - to be held in June & July 1983. |
| X | Kaiser Mead | Mead, WA | None | | |
| X | Lakewood | Lakewood, WA | None | | |
| X | Pesticide Pit, Yakima | Yakima, WA | None | | |
| X | Arrcom (Drexler Enterprises) | Rathdrum, ID | Federal | Admin. | |

NATIONAL PRIORITY SITES: ENFORCEMENT STATUS

| REGION | SITE NAME | LOCATION | STATE/FEDERAL ACTION | JUDICIAL/ADMINIST. ACTION | STATUS NEGOTIATIONS |
|---|---|---|---|---|---|
| X | Com. Bay, Near Shore Tide Flat | Tacoma, WA | None | | |
| X | Bunker Hill | Smelterville, ID | Federal | Admin. (RCRA) | |
| X | Flynn Lumber Co. | Caldwell, ID | None | | |
| X | Gould, Inc. | Portland, OR | State | | |
| X | Teledyne Wah Chang | Albany, OR | None | | |
| X | Western Processing | Kent, WA | Fed. & State | Fed. Judicial (complaint Filed - 2/25/83) & State Judicial. | Federal Negotiations Ended. |

Mr. MOLINARI. Can you give me an idea of how long it would take to get that information together?

Mr. PERRY. We would appreciate as much time was we can in view of the fact of our other demands that we have. Could we have about 3 weeks, Mr. Molinari?

Mr. MOLINARI. Mr. Perry, can you assure us you would be able to meet a 3-week deadline?

Mr. PERRY. Yes, sir.

Mr. MOLINARI. That would be acceptable then.

Mr. PERRY. We appreciate your understanding.

Mr. MOLINARI. I know you've got problems.

Mr. LEVITAS [presiding]. Thank you, Mr. Molinari. We will get back to that in a minute.

Mr. Perry, when did you first learn that Ropes & Grey had been employed by the Agency?

Mr. PERRY. Well, it was the day of our Christmas party.

Let me confer with Mr. Yamada, and I will get you that date.

Mr. LEVITAS. You didn't know about it while it was going on, even though you were general counsel?

Mr. PERRY. No. The Administrator called me up to her office and they were there. She probably tried to get me before, but it was a real busy season. I remember I went up and met them.

Mr. LEVITAS. See if you can get the date for them.

Mr. PERRY. It was December 21, Mr. Chairman.

Mr. LEVITAS. Now it is your testimony——

Mr. PERRY. To the best of my knowledge, and I will correct that in the record if it is not right.

Mr. LEVITAS. Prior to that time, you were unaware of the fact that the Administrator for whom you were general counsel was making arrangements to bring in outside counsel?

Mr. PERRY. That is correct.

Mr. LEVITAS. Did that surprise you?

Mr. PERRY. I didn't know they were going to be the firm, but I knew that she was concerned and would very much like to have expertise on the staff. We had discussed that many times. I just didn't know the Ropes & Grey firm was the one.

Mr. LEVITAS. But you had discussed with her her desire to get outside counsel other than the Justice Department?

Mr. PERRY. Yes, sir, we had discussed that on several occasions prior to the time that I met the firm.

Mr. LEVITAS. But the first time you ever heard of Ropes & Grey was on December 21, or whatever the day the Christmas party was?

Mr. PERRY. That she was interested in that particular firm, that is correct.

Mr. LEVITAS. You said you actually met them, didn't you?

Mr. PERRY. I met them on that day. She called me and I went to her office. She could have been trying to get me prior to that, but I was probably not available.

Mr. LEVITAS. When did you know what their responsibilities were?

Mr. PERRY. Probably that day. After we met them in her office, they came down to my office, and then we discussed the situation. I knew one of the lawyers prior to that time.

Mr. LEVITAS. What were their responsibilities?

Mr. PERRY. They were going to advise my office and my staff on the constitutional issues that we were facing. We did not have any constitutional expertise in our office, and Mr. Marshall Moriarty and Mr. Thomas Sussman had that expertise.

I remember leaving the administrator's office, going into my office, and discussing their expertise and what role they could play.

Mr. LEVITAS. Give me an example of what their expertise was that there is so much need for? I don't mean the background. Let me be sure.

What I am talking about is, give me an example of the type of advice they were to provide.

Mr. PERRY. On the constitutional issues. This was now in litigation.

Mr. Moriarty had a lot of experience in litigating constitutional issues in the courthouse and——

Mr. LEVITAS. Did it have to do with the documents?

Mr. PERRY. No, sir. They did not get involved with the documents.

We made it very clear—and I am glad you raised that, because in no way were they going to have access or even come close to those documents. That is indeed in the agreement. They would not be shown the documents.

Mr. LEVITAS. You say that was in their agreement. When did Ropes & Grey terminate their work for EPA?

Mr. PERRY. When we finished the brief in support of the motion for summary judgment.

Mr. LEVITAS. Approximately what date was that?

Mr. PERRY. Could I confer on that?

Mr. LEVITAS. Sure.

Mr. PERRY. Let me consult my calendar here.

It was probably around January 5—or was it later than that? Just a minute.

I would have to double check. It might have been later than that.

Mr. LEVITAS. Well, on January 17, in your calendar there is indicated a meeting with Mr. Yamada: "Re, Ropes & Grey letter." Then a meeting with a Marshall Moriarty thereafter on that same date.

Now, what was that about?

Mr. PERRY. We were trying to resolve a conflict of interest problem as to whether or not they could continue on the case.

Mr. LEVITAS. Isn't it true that the letter, which was—or agreement which was entered into and communicated to Ropes & Grey about their lack of or denial of access to the documents was the subject matter of that meeting?

Mr. PERRY. No, sir. They were not interested in the documents at all.

Mr. LEVITAS. Wasn't there a document that finally was created in which it spelled out the fact that they were not going to have any access to these documents?

Mr. PERRY. We had a preliminary agreement with them that they would have no access whatsoever to the documents.

Mr. LEVITAS. Wasn't there an instrument prepared setting that forth?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. When was that instrument prepared?

Mr. **Perry**. It was a letter agreement. It was prepared by Mr. Yamada.

Mr. **Levitas**. When was that, Mr. Yamada? Did it have anything to do with that meeting on January 17?

Mr. **Yamada**. No.

Mr. **Perry**. We can certainly supply you with precise data on that, but I would take a copy of the letter and compare it to our meetings and give you an accurate account.

Mr. **Levitas**. I have information to the effect that that letter was prepared, the one I am talking about, after it became public that Ropes & Grey were working for EPA.

Mr. **Perry**. No, we had a preliminary agreement with them. I can supply that for the record.

Mr. **Levitas**. I would like to have a copy of the letter and any drafts that preceded the final letter.

Mr. **Perry**. Mr. Levitas, we may not have all—I will get the letters that we have and compare the dates and make it absolutely clear, the chronology.

[The information received from Mr. Perry follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

January 3, 1983

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

George Marshall Moriarty, Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Dear Mr. Moriarty:

This letter is intended to reflect our current understanding concerning the relationship between Ropes & Gray and the Office of Legal and Enforcement Counsel, Environmental Protection Agency (EPA), with regard to your firm's providing us with expert legal advice in connection with the recent citation of Administrator Gorsuch for contempt of Congress, related litigation, and responses to related congressional requests for or subpoenas of documents. EPA personnel are currently preparing appropriate contract documents (the Contract) to reflect our engagement of Ropes & Gray as an independent contractor to provide non-personal, professional services to EPA relating to these matters.

The Contract will provide, and we mutually agree, that Ropes & Gray, by virtue of its performance under this engagement, will have no access to any documents pertaining to enforcement or other regulatory activities of EPA. Ropes & Gray will maintain the confidentiality of any privileged or otherwise confidential information or data to which it may gain access and will use such information or data solely for the purpose of providing non-personal services on matters within the scope of this engagement.

You have disclosed to me that Ropes & Gray regularly represents clients which currently have, and may be expected during the course of this engagement to have, other unrelated matters before and under the jurisdiction of the EPA. Consistent with the laws and regulations governing the non-personal services contract which will govern our relationship, neither Ropes & Gray nor any of its partners will be disqualified from representing clients in matters affecting the United States and its various agencies and departments, including EPA, on other matters unrelated to the scope of this engagement.

If the above accurately reflects your understanding, please sign the enclosed copy of this letter and return it to me so that this understanding might govern our relationship until the Contract is concluded.

Sincerely,

Robert M. Perry

Robert M. Perry
Associate Administrator
and General Counsel

Agreed to:
Ropes & Gray

By: George Marshall Moriarty
George Marshall Moriarty

Enclosure Thomas M. Susman

#9(b)

ROPES & GRAY
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(617) 423-6100

CABLE ADDRESS "ROPGRALOR"
TELEX NUMBER 940519
TELECOPY (617) 423-7841

IN WASHINGTON
1200 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 887-8734

January 10, 1983

Robert M. Perry, Esquire
Associate Administrator and General Counsel
Office of Legal and Enforcement Counsel
United States Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Perry:

The information contained in this letter is furnished pursuant to your request.

1. Shortly after our partner, G. Marshall Moriarty, met with Administrator Gorsuch on December 20, 1982, and we were requested to furnish advice to the Office of Legal and Enforcement Counsel, Environmental Protection Agency ("EPA"), we implemented our customary conflict of interest checks to determine whether there were any constraints upon our accepting this engagement. In addition, we conducted legal research to update our knowledge of the statutes and regulations relating to the furnishing of legal advice by outside counsel to an agency of the government of the United States since the last time we performed such a function. In addition, we circulated a memorandum to each of the approximately 170 lawyers in this firm, on December 22, 1982, requesting "[a]ny lawyer in the firm who is currently representing any client in respect of matters pending before the EPA or which might involve the EPA within the next 60 days ..." to report that information "immediately, in order to determine whether, and if so on what basis, to accept this representation without precluding the firm from carrying on its normal environmental practice for regular clients."

On January 6, 1983, we again circulated each lawyer in the firm, requesting a signed response setting forth whether or not he or she was "now representing any clients of Ropes & Gray in connection with any matters before the EPA or about which the EPA has, formally or informally, recently expressed a continuing interest ...".

The responses to these inquiries indicate that Ropes & Gray is currently involved as counsel of record in EPA proceedings on behalf of the following clients:

| Name of Client | Location of Facility |
|---|---|
| Aerovox, Incorporated<br>(as successor in title to an AVX Corporation plant) | New Bedford, MA expanded eligibility list |
| Malden Hospital | Malden, MA |
| Microfab, Inc. | Epping, NH Interim list |
| ST-Semicon, Inc. | Bloomington, IN — Neal's landfill Interim list<br>Lemon Lane landfill<br>Interim list |
| Union National Bank of Lowell<br>(as former secured lender, pursuant to SBA guarantees, to now defunct Silresim Chemical Corp.) | Lowell, MA Interim list |

We represent in various capacities numerous other clients whose activities may require EPA permits or review. For example: we have assisted several of our public utility clients in obtaining National Pollution Discharge Elimination System permits; we represented Harvard University in connection with obtaining a Prevention of Significant Deterioration gubernatorial exemption for its Medical Area Total Energy Plant; as bond counsel for several hospitals, we have prepared "environmental certifications" (which certify that approval for a given project has been received from all relevant environmental agencies); as bond counsel for a substantial number of cities, towns, or other political subdivisions in New England that receive, have agreements to receive, or may from time to time be applying for, EPA water pollution control grants, we are interested in the results of these processes; we represent Boston Edison, Public Service Company of New Hampshire, Maine Yankee Atomic Power Company, Vermont Yankee Nuclear Power

Corporation, and Yankee Atomic Electric Company who own and operate and/or are constructing nuclear power plants; we provide legal services, in various capacities, for several solid waste disposal/resource recovery projects which will require EPA permits, in none of which we are responsible for making the application or working directly on the granting of the required approvals, but none of which projects can proceed to a successful completion, including completion of contracting and financing arrangements (with which we are directly involved), until such approvals are given.

2. Attached hereto are copies of letters to you from G. Marshall Moriarty and Thomas M. Susman of this firm, indicating that neither of them is currently working on any matters directly involving the EPA and extending to you their personal commitment (which I extend on behalf of the firm) that neither of them will undertake (and the firm will not assign to them) any matters involving the EPA during the course of Ropes & Gray's engagement with your agency.

3. When we initially undertook to provide advice to the EPA, we concluded that our normal representation of regular clients in connection with environmental matters would not inhibit us from providing the best legal advice we are capable of rendering to the EPA in connection with the contempt of Congress citation issued to Administrator Gorsuch and in connection with any related litigation, including the currently pending case brought by the Department of Justice, The United States of America v. House of Representatives of the United States. After review of this conclusion in light of recent publicity, most particularly an article in the January 5, 1983, issue of The Washington Post, we have reaffirmed our original conclusion.

While we cannot, in any quantifiable way, measure what perception an uninformed person may take away from a reading of those articles, we concluded when we first agreed to undertake this engagement, and we still believe, that a responsible judge who is informed of the relevant facts should not in any way be prejudiced against the position being advanced by the Executive in the above-captioned litigation, because Ropes & Gray has in the past, and may in the future, furnish legal advice to the EPA. It has been suggested that such prejudice might arise in a judge to which the Department of Justice case might be assigned, if he perceived that the EPA had engaged lawyers with clients involved in the withheld documents. As indicated, we have rejected that suggestion and point out, as you undoubtedly already know, that we did not know, at the time we accepted the engagement, and do not know now whether any of the withheld documents involve any of the matters which we are currently handling for any of our clients. Moreover, the understanding upon which you and we have been operating since approximately December 22, 1982, states: "that Ropes & Gray, by virtue of its performance under this engagement, will have no access to any documents pertaining to enforcement or other regulatory activities of the EPA."

We would not be uncomfortable in explaining any of the foregoing before any validly constituted tribunal with jurisdiction over the subject matter, including a Congressional committee, assuming we were not requested or required to divulge information protected by the attorney-client privilege without a waiver of such privilege by the affected client, including in this instance the EPA.

If you need any further information with respect to any of the foregoing, I shall undertake to furnish it to you as quickly as possible, subject, of course, to the caveat just mentioned.

Very truly yours,

Ernest Sargeant

Ernest J. Sargeant
Managing Partner

EJS:les
Enclosures

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(617) 423-6100

January 10, 1983

Mr. Robert M. Perry
Associate Administrator
and General Counsel
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Perry:

In connection with your letter to Mr. Moriarty of January 3, 1983, and the contract referred to therein, you have requested the additional assurance that, during the period of that contract, I personally will not represent any client before the Environmental Protection Agency, even though others at Ropes & Gray may do so. I am pleased to give you that assurance, and I am also able to inform you that I am not now personally representing any client in any matter before the Environmental Protection Agency.

Sincerely,

Thomas M. Susman

TMS:kmc

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(617) 423-6100

CABLE ADDRESS "ROPGRALOR"
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IN WASHINGTON
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January 10, 1983

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Associate Administrator
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United States Environmental
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401 M Street, S.W.
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Very truly yours,

George Marshall Moriarty

George Marshall Moriarty

#9(c)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

JAN 28 1983

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

Ernest J. Sargeant, Esquire
Managing Partner
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Dear Mr. Sargeant:

Thank you for your letter of January 10, 1983, in which you provided us with a list of clients for which your firm is currently counsel of record in EPA-related proceedings. Your letter stated that the two Ropes and Gray attorneys who are advising this Agency concerning The United States of America v. House of Representatives and related matters are not currently working on any EPA-related matters for Ropes and Gray clients and will not become involved in any such matters as long as they are providing services to EPA. Letters to this effect from Messrs. Moriarty and Susman were enclosed.

Even though the Ropes and Gray attorneys who are assisting us do not personally represent clients in matters pending before EPA, our agreement is with the firm itself. Based on ABA Opinion 296 (1959) it is our opinion that DR 5-105(D) has the effect of making DR 5-105 applicable to the firm as whole. We therefore believe that if any attorney in the firm would be disqualified from serving a client, all attorneys in the firm would be similarly disqualified. The exception is if all the affected clients give their consent pursuant to DR 5-105(C). We consider your letter of January 10 as a partial disclosure of Ropes and Gray's clients who have interests which potentially conflict with the interests of EPA and a request that EPA consent to the firm's continued representation of those clients.

So that we can make an informed judgment under DR 5-105(C) about whether Ropes and Gray's representation of multiple clients would be consistent with the firm's ability to exercise independent professional judgment on our behalf, we request the following additional information:

(1) We believe that compliance with the screening procedures established by ABA Formal Opinion 342 in the context of waiver by government agencies of the post-employment restrictions of DR 9-101 would be the best way to ensure that EPA's consent to Ropes and Gray's continued representation of multiple clients would be in the best interests of the Government.

We expect that Messrs. Moriarty and Susman will not share any information concerning the EPA matter with other attorneys in the firm and that the other attorneys will not share information regarding their EPA-related cases with Messrs. Moriarty and Susman. The screening provisions of ABA Formal Opinion 342 would also require that procedures be established to ensure that Messrs. Moriarty and Susman will not share in firm earnings arising from representation of clientse in cases involving EPA.

(2) In our letter of January 3, 1983, we said that Ropes and Gray would maintain the confidentiality of any privileged or otherwise confidential information and would use such information solely for the purpose of performing work under the EPA contract. We understand this provision to mean that, even after the EPA contract is completed, any privileged or confidential information obtained from EPA could not be used in representing any other client. Please let me know if you agree.

(3) Consistent with our interpretation of the Disciplinary Rules, we believe that DR 5-105(C) requires not only EPA's consent to Ropes and Gray's representation of multiple parties with conflicting interests but the consent of the other affected clients as well. We therefore need assurances, preferably in writing, that the other clients have given their consent.

(4) On page 2 of your letter you listed five clients whom you are representing in EPA proceedings. While I am not suggesting that the firm's representation of clients in Superfund matters or in other proceedings involving EPA means that Ropes and Gray should be disqualified per se from continuing to provide assistance to EPA, we nonetheless need to know the following information in order to make an informed judgment. Are any of these proceedings under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients?

(5) Pages 2 and 3 of your letter generally and specifically discuss a number of clients, including municipalities, utilities and clients with solid waste disposal projects. For the reasons discussed in paragraph (4), we need the following information. Is any of your work for these clients related to proceedings under CERLCA? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients in EPA-related matters?

While I realize that Disciplinary Rules and their interpretation may vary among jurisdictions, my reading of the ABA Mode Code nonetheless suggests that the considerations discussed above need to be addressed. I trust that you share our concern that these matters receive the most careful consideration.

Sincerely,

Robert M. Perry

Robert M. Perry
Associate Administrator and
General Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

Ernest J. Sargeant, Esquire
Managing Partner
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Dear Mr. Sargeant:

Thank you for your letter of January 10, 1983, in which you provided us with a list of clients for which your firm is currently counsel of record in EPA-related proceedings. Your letter stated that the two Ropes and Gray attorneys who are advising this Agency concerning The United States of America v. House of Representatives and related matters are not currently working on any EPA-related matters for Ropes and Gray clients and will not become involved in any such matters as long as they are providing services to EPA. Letters to this effect from Messrs. Moriarty and Susman were enclosed.

Even though the Ropes and Gray attorneys who are assisting us do not personally represent clients in matters pending before EPA, our agreement is with the firm itself. Based on ABA Opinion 296 (1959) it is our opinion that DR 5-105(D) has the effect of making DR 5-105 applicable to the firm as whole. We therefore believe that if any attorney in the firm would be disqualified from serving a client, all attorneys in the firm would be similarly disqualified. The exception is if all the affected clients give their consent pursuant to DR 5-105(C). We consider your letter of January 10 as a partial disclosure of Ropes and Gray's clients who have interests which potentially conflict with the interests of EPA and a request that EPA consent to the firm's continued representation of those clients.

So that we can make an informed judgment under DR 5-105(C) about whether Ropes and Gray's representation of multiple clients would be consistent with the firm's ability to exercise independent professional judgment on our behalf, we request the following additional information:

(1) We believe that compliance with the screening procedures established by ABA Formal Opinion 142 in the context of waiver by government agencies of the post-employment restrictions of DR 9-101 would be the best way to ensure that EPA's consent to Ropes and Gray's continued representation of multiple clients would be in the best interests of the Government.

We expect that Messrs. Moriarty and Susman will not share any information concerning the EPA matter with other attorneys in the firm and that the other attorneys will not share information regarding their EPA-related cases with Messrs. Moriarty and Susman. The screening provisions of ABA Formal Opinion 342 would also require that procedures be established to ensure that Messrs. Moriarty and Susman will not share in firm earnings arising from representation of clients in cases involving EPA. — will continue to share in firm [illegible]

(2) In our letter of January 3, 1983, we said that Ropes and Gray would maintain the confidentiality of any privileged or otherwise confidential information and would use such information solely for the purpose of performing work under the EPA contract. We understand this provision to mean that, even after the EPA contract is completed, any privileged or confidential information obtained from EPA could not be used in representing any other client. Please let me know if you agree.

X (3) Consistent with our interpretation of the Disciplinary Rules, we believe that DR 5-105(C) requires not only EPA's consent to Ropes and Gray's representation of multiple parties with conflicting interests but the consent of the other affected clients as well. We therefore need assurances, preferably in writing, that the other clients have given their consent. ([illegible] Representation)

[illegible]

(4) On page 2 of your letter you listed five clients whom you are representing in EPA proceedings. While I am not suggesting that the firm's representation of clients in Superfund matters or in other proceedings involving EPA means that Ropes and Gray should be disqualified per se from continuing to provide assistance to EPA, we nonetheless need to know the following information in order to make an informed judgment. Are any of these proceedings under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients?

X (5) Pages 2 and 3 of your letter generally and specifically discuss a number of clients, including municipalities, utilities and clients with solid waste disposal projects. For the reasons discussed in paragraph (4), we need the following information. Is any of your work for these clients related to proceedings under CERLCA? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients in EPA-related matters?

While I realize that Disciplinary Rules and their interpretation may vary among jurisdictions, my reading of the ABA Model Code nonetheless suggests that the considerations discussed above need to be addressed. I trust that you share our concern that these matters receive the most careful consideration.

Sincerely,

Robert M. Perry
Associate Administrator and
General Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

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Even though the Ropes and Gray attorneys who are assisting us do not personally represent clients in matters pending before EPA, our agreement is with the firm itself. Based on *ABA Opinion 296* (1959) it is our opinion that DR 5-105(D) has the effect of making DR 5-105 applicable to the firm as whole. We therefore believe that if any attorney in the firm would be disqualified from serving a client, *all* attorneys in the firm would be similarly disqualified. The exception is if all the affected clients give their consent pursuant to DR 5-105(C). We consider your letter of January 10 as a partial disclosure of Ropes and Gray's clients who have interests which potentially conflict with the interests of EPA and a request that EPA consent to the firm's continued representation of those clients.

So that we can make an informed judgment under DR 5-105(C) about whether Ropes and Gray's representation of multiple clients would be consistent with the firm's ability to exercise independent professional judgment on our behalf, we request the following additional information:

(1) We believe that compliance with the screening procedures established by ABA Formal Opinion 142 in the context of waiver by government agencies of the post-employment restrictions of DR 9-101 would be the best way to ensure that EPA's consent to Ropes and Gray's continued representation of multiple clients would be in the best interests of the Government. What procedures have been established for insulating Messrs.

Moriarty and Susman from participation in cases involving EPA? We expect that these attorneys will not share any information concerning the EPA matter with other attorneys in the firm and that the other attorneys will not share information regarding their EPA-related cases with Messrs. Moriarty and Susman. The screening provisions of ABA Formal Opinion 142 would also require that procedures be established to ensure that Messrs. Moriarty and Susman will not share in firm earnings arising from representation of clients in cases involving EPA.

(2) ~~In our letter of January 3, 1983, we said that Ropes and Gray would maintain the confidentiality of any privileged or otherwise confidential information and would use such information solely for the purpose of performing work under the EPA contract. We understand this provision to mean that, even after the EPA contract is completed, any privileged or confidential information obtained from EPA could not be used in representing any other client. Please let me know if you agree.~~

(3) Consistent with our interpretation of the Disciplinary Rules, we believe that DR 5-105(C) requires not only EPA's consent to Ropes and Gray's representation of multiple parties with conflicting interests but the consent of the other affected clients as well. We therefore need assurances, preferably in writing, that the other clients have given their consent.

(4) On page 2 of your letter you listed five clients whom you are representing in EPA proceedings. Are any of these proceedings under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients?

(5) Pages 2 and 3 of your letter generally and specifically discuss a number of clients, including municipalities, utilities and clients with solid waste disposal projects. Is any of your work for these clients related to proceedings under CERLCA? Are any of these clients responsible parties under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list or the recently proposed national priority list? What is the nature of your representation of these clients in EPA-related matters?

I realize that Disciplinary Rules and their interpretation may vary among jurisdictions, and I am not suggesting that the fact that Ropes and Gray represents clients in Superfund matters or in in other EPA-related cases means that the firm should be be disqualified *per se* from continuing to provide assistance to EPA. However, I trust that you share our concern that these matters receive the most careful consideration.

Sincerely,

Robert M. Perry
Associate Administrator and
General Counsel

#9(d)

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February 9, 1983

Robert M. Perry, Esq.
Associate Administrator and General Counsel
Office of Legal and Enforcement Counsel
United States Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Perry:

This will acknowledge receipt of your letter of January 28, 1983.

We are aware of Formal Opinion 296, issued on August 1, 1959, by the American Bar Association's ("ABA") Committee on Professional Ethics; we concur in your interpretation of DR 5-105(D) of the ABA's Code of Professional Responsibility, which (except for minor changes not here relevant) has been adopted in Massachusetts; and we have always attempted to act in accordance with that interpretation. The letters previously sent to you from Messrs. Moriarty and Susman were not intended to indicate any different position but were, as you know, prepared at your request.

In our view, DR 5-105 is not applicable in connection with Ropes & Gray's advising the Environmental Protection Agency ("EPA") concerning The United States of America v. House of Representatives of the United States and related matters. No client of this office has, so far as we are aware, any "differing interest" -- or indeed any legal, pecuniary or other interest whatever -- in whether Administrator Gorsuch has complied with the House Subcommittee's subpoena or in any of the constitutional questions involved in the present controversy between the Executive and the Congress. As you were told at the time of Mr. Moriarty's first meeting with you on December 20, 1982, this office does represent clients in various matters and proceedings in which EPA is involved, but none of these presents any question of constitutional privilege or contempt of Congress like those about which you have asked our advice, nor, in our judgment, is it remotely likely that any such question will arise in the course of our representation of these clients. If you, nonetheless, wish to assume that DR 5-105 is applicable, you may consider my letter of January 10, 1983, as supplemented hereby, as a request that the EPA consent to Ropes & Gray's continued representation of our clients referred to therein.

With respect to the additional information which you have requested:

(1) Your expectations stated in the first and second sentences of your paragraph numbered (1) are correct. The screening procedures referred to in Formal Opinion 342, issued on November 24, 1975, by the ABA's Committee on Ethics and Professional Responsibliity will be established and maintained during the course of our engagement, assuming, of course, that the EPA chooses to continue our engagement in this matter. As to firm earnings, Formal Opinion 342 requires screening only with respect to matters for which "a public employee . . . had substantial responsibility."

(2) Your understanding set forth in your paragraph numbered (2) is correct.

(3) This will constitute our assurance that DR 5-105(C), if it is applicable at all, has been complied with, in so far as the other clients of this firm referred to in paragraph numbered (4) below, are concerned.

(4) With respect to the information which you have requested in your paragraph numbered (4):

(a) Aerovox, Inc. Ropes & Gray has been representing Aerovox, Inc., for approximately two years in connection with problems arising out of the pollution of New Bedford harbor. The harbor and the Acushnet River, which is a tidal estuary leading into it, have been contaminated with PCBs, a substance which Congress has determined to be toxic. PCBs were banned in 1978 and the harbor has been closed to fishing and lobstering since 1979. Aerovox acquired the plant in question also in 1978.

Aerovox has been sued by lobstermen claiming economic injury as a result of the harbor closure. The EPA has asserted claims against

Aerovox and Cornell-Dubilier Electronics, Inc., another corporation located in New Bedford. Although the EPA has relied on the Toxic Substances Control Act in part, it also has invoked CERCLA. Aerovox denies that it is a responsible party under Section 107(a) of CERCLA in relation to sites listed on the interim priorty list, the expanded eligibility list, or the recently proposed national priority list.

Aerovox agreed to the entry of a consent decree pursuant to which it would conduct tests and recommend appropriate remedial action with respect to the plant site itself, although not with respect to the harbor and river. A copy of that consent decree, together with a draft EPA press release and copies of articles from the May 26, 1982, editions of The Boston Globe and the Herald American, are enclosed. In addition, Aerovox has met with EPA Regional Office officials to discuss the river and harbor. The harbor is on the EPA's Superfund list and is currently undergoing a study by the EPA entitled "A Remedial Action Master Plan". The EPA probably will send a Superfund notice to Aerovox and others requiring production of documents and possible contribution to further studies and cleanup. Although Aerovox has been cooperating with the EPA, it has taken the position that any pollution of the harbor is not the responsibility of Aerovox, but rather of Aerovox's predecessor in title to the plant, if CERCLA is applicable at all.

(b) Malden Hospital. Ropes & Gray has been representing Malden Hospital in connection with an EPA inquiry about boiler waste water discharge at the Hospital. This matter is close to resolution, but it has not been formally resolved. The Hospital has discharged waste water above ground and the EPA has notified the Hospital to have the water otherwise discharged. The Hospital plans to have the water discharged into the sewer system. Both the Metropolitan District Commission, the operator of the sewer, and the EPA have orally approved discharge into the sewer.

(c) Microfab, Inc. Ropes & Gray, which is the general counsel to Microfab, is representing Microfab in connection with assertions by the EPA that it is liable as a responsible party under CERCLA for its disposal of hazardous waste at the Keefe Environmental Services, Inc., dumpsite in Epping, New Hampshire, assertions which Microfab has not admitted. We are informed that this dumpsite is listed on the recently proposed national priority list. Settlement negotiations in connection with the asserted liability are currently underway between all of the putative responsible parties, the EPA, and the State of New Hampshire.

(d) ST-Semicon, Inc. I am now informed that there are no current EPA proceedings in which we are representing this client as counsel of record. The name of this client should not have been included in my letter of January 10, 1983.

(e) Union National Bank of Lowell. Ropes & Gray represents Union National Bank of Lowell ("UNB"). UNB was a commercial lender to Silresim Chemical Corp. under several loan agreements. The loans were for the most part made pursuant to certain guarantees made by the federal Small Business Administration ("SBA"). No advances to Silresim were made by UNB after 1976. Subsequent to October, 1976, the SBA guaranteed loans were assigned to the SBA, which paid UNB the percentage of the then outstanding indebtedness that was subject to the guarantees (approximately 90%). Pursuant to SBA direction, in 1976 UNB exercised its rights as a secured party to take possession of certain Silresim records evidencing or regarding pledged accounts receivable, but UNB made no attempt to enforce any security interest it might have had either in the Silresim real estate or in the Silresim personal property, other than those records. UNB does not believe that it is a responsible party under Section 107(a) of CERCLA in relation to the Silresim site, which it is informed does appear on the recently proposed national priority list.

Ropes & Gray is counsel of record for UNB in connection with the defense of McMahon et al. v. Silresim Chemical Corp., et al. in the Superior Court for Suffolk County, Massachusetts, an action brought by agencies of The Commonwealth of Massachusetts against Silresim Chemical Corp., John Miserlis (Silresim's President and principal shareholder), and UNB. The action was brought under certain Massachusetts statutes, including St. 1976, ch. 407. The action has not proceeded beyond the stage of complaint and answer and initial discovery. In September, 1982, UNB and the Commonwealth entered into an executory settlement agreement, a copy of which is enclosed. One of the conditions upon UNB's obligations under that agreement was the obtaining and delivery of certain instruments by the United States of America and the EPA in favor of UNB, which UNB is informed the Attorney General of the Commonwealth has requested the EPA to give.

(5) With respect to the information which you have requested in your paragraph numbered (5):

(a) Municipalities. While Ropes & Gray acts as bond counsel for a substantial number of cities, towns, and other political subdivisions in New England, I am informed that there are no current EPA proceedings in which we are representing any such clients as counsel of record.

(b) Public Utilities. I am informed that there are no current EPA proceedings in which Ropes & Gray is representing any public utilities or Harvard University as counsel of record.

(c) Solid Waste Disposal Projects. Ropes & Gray is providing legal services, in various capacities, for several solid waste disposal resource/recovery projects. I am informed that there are no current EPA proceedings in which we are representing any clients involved with these projects as counsel of record.

We do not know whether any of the municipalities or public utilities referred to above or Harvard University or anyone who is or might be characterized as a client in respect of solid waste disposal resource/recovery projects is a responsible party under Section 107(a) of CERCLA in relation to sites listed on the interim priority list, the expanded eligibility list, or the recently proposed national priority list.

(6) To assist you further in making a judgment about whether Ropes & Gray's representation of multiple clients would be consistent with our ability to continue to exercise independent professional judgment on behalf of the EPA in connection with The United States of America v. House of Representatives of the United States and related matters, I should like to set forth Ropes & Gray's understanding as to how this firm and its partners will proceed in representing existing and future clients in future matters which are unrelated to the scope of our present engagement by EPA and which affect the United States and its various agencies and departments, including EPA. We shall continue to practice law in accordance with what we regard as perceptions of propriety, as well as with the provisions of any applicable canons of legal ethics and any relevant laws or regulations. If we are proffered employment in the future by new or current clients in respect of EPA matters or EPA proceedings, we intend to accept or reject such employment based on these considerations. We shall not be under any obligation to seek your consent to any such future employment if, in our opinion, the exercise of our independent professional judgment on behalf of the EPA will not be, and is not likely to be, adversely affected by our representation of such other client, and if we do not regard such employment as likely to involve us in representing differing interests. We will, however, inform you if such representation with respect to an

EPA matter in our view would involve us in representing differing interests, and we will also inform you at such time in the future as any employment of Ropes & Gray by other clients, with respect to EPA matters, ripens into EPA proceedings in which Ropes & Gray has been asked to become counsel of record. At such time, the EPA will have the option of consenting to such representation or terminating our engagement by it. We do not interpret your letter to require anything of us beyond the foregoing undertaking, and we will consider your continuation of our engagement, if you choose to do so, as confirmation that our understanding in this regard is correct. As used in this letter, the term "EPA matters" refers to fact situations in respect of which the EPA has jurisdiction or over which the EPA has asserted jurisdiction; the term "EPA proceedings" refers to then pending matters involving the EPA which are the subject of administrative or judicial proceedings in which Ropes & Gray has agreed to represent another client or in which one or more Ropes & Gray lawyers may reasonably be expected to have personal contact with EPA officials on behalf of a client other than the EPA. All of the foregoing is, of course, subject to the constraints imposed upon all lawyers by the attorney-client privilege.

Very truly yours,

Ernest Sargeant

Ernest J. Sargeant
Managing Partner

Enclosures

Mr. **Levitas**. What was this letter that was being talked about? You are going to give me the drafts, too?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. What was the letter that you met with Mr. Yamada about regarding Ropes & Grey on January 17?

Mr. **Perry**. If we were going to continue them on the case, we had to ensure that a proper wall was built between Mr. Moriarty, Mr. Sussman, and EPA.

Mr. **Levitas**. It didn't exist prior to January 17?

Mr. **Perry**. Well, they were only working then precisely on the constitutional issues, which were generic.

And if they were going to continue on the case, we wanted an ironclad agreement as to their interaction with their other clients. That was probably the letter that we were talking about.

Mr. **Levitas**. In earlier testimony today, you had said that after Mr. Sanderson left the agency the only time you recalled at that moment that he had come back was to talk about executive privilege sometime in December. Then I asked you some other questions.

You recall the meeting where he came in and talked about an incinerator. Those were two occasions.

Were there any other occasions where you met with Mr. Sanderson and discussed EPA matters after he left the agency other than those two which I have just identified?

Mr. **Perry**. Prior to that time, it is quite possible I could have, Mr. Chairman.

Mr. **Levitas**. Prior to what time?

Mr. **Perry**. To that December date, not after that that I recall. But prior to that time, he would come in.

Mr. **Levitas**. You had a meeting with him in January, you told me.

Mr. **Perry**. Did I have a meeting in January? That is quite possible.

Yes, that was the one that we discussed. Yes, sir.

Mr. **Levitas**. Now, the January and December meeting, what about prior to December and after he had left?

Mr. **Perry**. I can check my calendar and give you an accurate rundown of it.

Mr. **Levitas**. Do you have a recollection of any such meetings?

Mr. **Perry**. Not many—I don't think I had many meetings with him, but right now I can just not remember.

Mr. **Levitas**. Did you ever discuss the Seymour case?

Mr. **Perry**. No, sir.

Mr. **Levitas**. Heidi Hughes, do you know who Heidi Hughes is?

Mr. **Perry**. Yes, sir, she is a very capable lawyer on our enforcement staff.

Mr. **Levitas**. In Washington or out in the field?

Mr. **Perry**. In Washington at our headquarters' enforcement office.

Mr. **Levitas**. Did she have anything to do with the Stringfellow site?

Mr. **Perry**. Yes, sir.

Mr. LEVITAS. Did you discuss with Ms. Hughes any problem relating to political consideration that might be involved in the Stringfellow case?

Mr. PERRY. Yes, sir.

Mr. LEVITAS. Would you describe that for the committee?

Mr. PERRY. In regard to a request by Congressman Dingell to interview our employees in executive session, I asked my staff to make themselves available to counsel, our employees as to their rights in an executive session hearing and to counsel them insofar as maintaining the enforcement sensitive prerogative of the President that they not disclose during these executive session hearings any enforcement sensitive documents so we had a staff meeting prior to the time that these employees were to have appeared before Mr. Dingell's executive session.

This was a purely voluntary meeting. I did not attend the meeting but my staff lawyer, who attended, reported to Mr. Yamada that Heidi Hughes mentioned at that meeting that she was concerned that maybe one of her documents referred to some political annotations.

That evening I went over to Mr. Kurent's going-away party and Mr. Yamada informed me that he better look at the enforcement sensitive documents of Ms. Hughes because he had been informed by his staff lawyer, who attended this preparatory meeting, that Ms. Hughes had made that statement and he looked at her notes in Mr. Kurent's office and really couldn't find anything.

I was concerned because I told Gerald, well—this was a Friday night—and I said, let's pull all the documents and Saturday it was Washington's Birthday, and we had a holiday that following Monday, it was either that Saturday or Sunday Mr. Yamada, Mr. Mays, and I went through Ms. Hughes' notes and we went through all the Stringfellow notes; and we did find some references that she had made that had a political reference, in other words, some of them were very innocuous.

We really didn't know what they meant. It was not that clear, but the statements—I don't know whether you have seen them—they were enough to, I asked Mr. Yamada to ask her to come back and explain them further to us. Unfortunately, she was going to California to negotiate the Stringfellow case and they didn't get the chance to see her until that following Friday.

Mr. LEVITAS. All right.

Mr. PERRY. But in the meantime I had to issue instructions to our employees that were appearing before the Dingell committee that they were authorized to disclose to the committee any evidence of political connotations to the committee even though it might be within the confines of an enforcement sensitive document.

So we put that instruction out and then in the meantime, Mr. Yamada talked to Ms. Hughes and——

Mr. LEVITAS. Were the documents to which you refer where Ms. Hughes had references to political considerations, were those handwritten notes?

Mr. PERRY. They were her handwritten notes from meetings, and basically—they were not really clear. You would have to look very hard to say well, are these political notes or not. But——

Mr. **Levitas**. But you discussed that with Ms. Hughes, didn't you?

Mr. **Perry**. Yes, we did.

Mr. **Levitas**. What did she say it was all about?

Mr. **Perry**. The administrator got very concerned that the employee, for instance in this case it was in Heidi's case, that if she was going to appear in executive session that she not be put in a position where she could be held in contempt and in the meantime I believe that a deal had been struck with you and the administration that documents could be—those redacted documents could be released.

Mr. **Levitas**. My question was, did you find out from Ms. Hughes what she was talking about on those notes?

Mr. **Perry**. Yes, Mr. Yamada, then, the following Friday when she got back from California, Mr. Yamada interviewed her.

Mr. **Levitas**. Would you share that with us? What was she talking about?

Mr. **Perry**. Mr. Yamada interviewed her and it might be best to get it directly from him.

Mr. **Levitas**. What was she talking about?

Mr. **Yamada**. The reason I had to confer with Mr. Perry is I don't believe he had any personal contact or discussions with Heidi Hughes. What happened was I think it was on February 18, if that is a Friday, we were at Ed Kurent's farewell party and received a phone call about 5 in the evening from Mr. Lee DeHihns who is one of my associate general counsels. He was the one conducting the briefing sessions for the employees.

One of the employees, Heidi Hughes, raised the question—how to respond to questions dealing with notes or things in the papers which had political connotations. It was communicated back to me that she believed that one set of notes that she had contained the term "election tracking."

I had never met Heidi Hughes before but I waited until she came back and I asked her to get the notes and we went through the notes I think twice and could not find that term itself in the notes.

She thought perhaps if it weren't there that it could be perhaps in another set of notes that we were not going through, so I gave her my home phone number, and office phone number and told her to look through them and over the weekend please give me a call.

On Sunday, Richard Mays, Bob Perry, and I got together to go through all the Stringfellow notes.

Mr. **Levitas**. That was at EPA?

Mr. **Yamada**. In Mr. Perry's office.

Mr. **Levitas**. On Sunday?

Mr. **Yamada**. The 20th, yes.

Mr. **Levitas**. OK.

Mr. **Yamada**. We identified one sentence in her set of notes which when you read it in the context of what the papers had coined as "election tracking," that it would connote that. Bob Perry asked me to check into it further and my intent was on Tuesday to chat with her to see if she did in fact, didn't write the exact terminology, "election tracking;" but something that connoted that.

Mr. **Levitas**. I don't understand election tracking, what does that mean?

Mr. **Yamada**. Basically that is a term that I think was coined by the press which means that funding decisions in the Superfund Program had been used to manipulate decisions which affect elections, which is a criminal violation.

I found out that she was on travel for that week and she came back on Friday. I met with her first thing Friday morning and she confirmed that that was probably what she was talking about, she confirmed——

Mr. **Levitas**. Election tracking?

Mr. **Yamada**. Yes, that type of thing.

I prefer not to get into the exact wording——

Mr. **Levitas**. I don't want you to because we are going to look at those documents and question them in executive session.

Mr. **Yamada**. Right.

Mr. **Levitas**. But if——

Mr. **Yamada**. Let me go on——

Mr. **Levitas**. This is now the Friday of the week of the 25th?

Mr. **Yamada**. Friday, the 25th, yes.

I asked her who else was present from the legal office——

Mr. **Levitas**. Incidentally, the Executive privilege wouldn't apply to anything that has anything to do with a criminal act, you understand that?

Mr. **Yamada**. Yes, I understand that. I asked who else was present at the meeting from our office. She gave me two names; one person was not present, she was on travel that day. The other person said she was present; the only thing I asked was to see a copy of her notes if she had a copy of the notes.

She sent them over and in the notes there was a more definitive statement and that afternoon we referred the matter to the Justice Department.

Mr. **Levitas**. And this had to do with election tracking?

Mr. **Yamada**. That type of thing, yes.

Mr. **Perry**. But the document Mr. Yamada found was not a document that was enforcement sensitive. That document had been given to your committee.

Mr. **Yamada**. Right.

Mr. **Levitas**. Right. On February 28, there is an item on your schedule, Mr. Perry, says Heide Hughes, re Stringfellow.

What is that about?

Mr. **Perry**. That was my briefing in anticipation of me appearing before Mr. Dingell's committee.

Mr. **Levitas**. I need—let me say beforc I leave the Heidi Hughes matter, that matter has been referred to the Justice Department?

Mr. **Perry**. Yes.

Mr. **Yamada**. Yes, it has. We would be happy to provide a referral letter as we did with Chairman Dingell, the only thing we ask is that the attachments be held as executive session materials because they possibly contained evidence.

Mr. **Levitas**. Sure. We would appreciate your furnishing us a copy of that as expeditiously as possible.

Mr. LEVITAS. I need to get back to the missing boxes of Chem-Dyne files, the two boxes of missing Chem-Dyne files. You have known about that about a week, as I understand, is that correct?

Mr. YAMADA. I think a little longer than that, I think about two.

Mr. LEVITAS. Did you notify the Justice Department about this?

Mr. YAMADA. Yes, sir, we did.

Mr. LEVITAS. When did you do that?

Mr. YAMADA. I think we informed the Justice Department on the 25th of February which is the day that we referred the other matter over. I think we had just learned about it about then.

Mr. LEVITAS. Who is involved in trying to locate either those files or to determine what were in those files or to ascertain whether there are duplicates of those files? Who is actually doing it?

Mr. YAMADA. I asked our regional counsel in Chicago to do that. They have submitted an initial report and a subsequent report on that. They are having difficulties because they really don't know what was in the boxes. They are speculating that it contained some engineering data and what they call historical data. It is my understanding that the Chem-Dyne site is quite old and that there are some materials that are 1 or 2 years old but they cannot tell me what explicitly was in the boxes.

Mr. LEVITAS. You see Chem-Dyne is one of the sites that we specifically not only subpenaed but have asked a lot of questions about.

Mr. YAMADA. I know.

Mr. LEVITAS. I am really concerned about what other files or documents might not be there.

It is important that we know immediately what information you get about locating those files or ascertaining what was in those files or whether there were duplicates.

Mr. YAMADA. I would be more than happy to furnish to you all the reports or the two reports that we have to date on it. I will tomorrow morning call the regional counsel and get a status and inform your staff.

Mr. LEVITAS. OK.

I just have a couple more questions, Mr. Perry.

One is, do you have any knowledge direct or indirect firsthand or secondhand, that any documents concerning hazardous wastes, Superfund, RCRA, any enforcement files, any enforcement sensitive materials, any handwritten notes, buck slips, routing slips, notes, phone messages, any materials that were in EPA's custody that might have been removed from agency files by anyone in EPA or the Department of Justice or anyone else for which copies or duplicates or originals no longer exist?

Mr. PERRY. Except for the two boxes mentioned by Mr. Yamada, I do not have any knowledge that that type of destruction has ever taken place.

Mr. LEVITAS. Earlier you described your relationship with the Chem-Dyne settlement as having——

Mr. PERRY. My aide just said that since the subpoena, you can be assured that the enforcement sensitive documents have not been destroyed prior to that.

Mr. LEVITAS. Let me get into enforcement sensitive documents.

Mr. PERRY. My answer would still be the same. I just would not be in a position to know that.

Mr. **Levitas**. I am very specifically not limiting you to enforcement sensitive documents or even Superfund, hazardous waste or RCRA.

Mr. **Perry**. Some notes, Mr. Chairman, would be destroyed because they are no longer useful, but I would not have any direct or indirect knowledge of when those are going to be so destroyed.

Mr. **Levitas**. You described your role earlier in the Chem-Dyne settlement as having signed off. Were you involved in the analyzing or approving based upon information and knowledge of any of the substance of that settlement?

Mr. **Perry**. No, sir. The substance was negotiated by the staff and Mr. David Graham.

Mr. **Levitas**. What was your role, then? I know it is signing off, but what does signing off mean? Was it a rubberstamp?

Mr. **Perry**. No, sir. It was looking at the strategy of overall filing of the lawsuit against those companies who did not sign up on the agreement.

I was consulted on the tier structure because this was the first time that the agency had ever gone into a tier group settlement. I played a role in discussing the tier, whether or not that was legal and what we were getting involved with.

Mr. **Levitas**. Is that what you meant by strategy?

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. What else was involved?

Mr. **Perry**. The merits of the agreement itself, I really didn't get involved in.

Mr. **Levitas**. How about the amount of money that was being settled?

Mr. **Perry**. No, sir, not in an active sense, just in a sense that I did approve these.

Mr. **Levitas**. Who was going to do the cleanup at Chem-Dyne?

Mr. **Perry**. I believe the Corps of Engineers. The Government is doing that.

Mr. **Levitas**. What was your role in the Seymour settlement?

Mr. **Perry**. OK. In Seymour my role was one of ensuring that the agreement was enforceable. I did not participate, except when I had that meeting with the major 24 companies.

The negotiations were primarily done by the program staff, Mr. Brown and the Justice Department lawyer, Mr. Steve Ramsey, who did a real good job in that case as far as the merits of the negotiations were concerned.

Mr. **Levitas**. Was it your preference to settle rather than negotiate with respect to the agreements reached with the 195 companies in Seymour?

Mr. **Perry**. I definitely wanted to file a lawsuit on those companies who did not enter into that agreement, the voluntary agreement part.

I felt very strongly that we should file a lawsuit immediately to make it known to the environmental community that we will negotiate. We will be happy to listen and get a fair deal for this country on cleanup, but if we can't get the parties to move, then we are prepared to file a lawsuit.

Mr. **Levitas**. Did you review the conditions of the Seymour case settlement prior to EPA's deciding to accept the offer?

Mr. PERRY. Yes, sir, very carefully on those. And on that, Mr. Chairman, that $7 million figure you must remember is ensured by a $15 million bond, which really makes it a total settlement of $21 million because it is not just limited by $7 million.

If they can't do that cleanup within the terms of that agreement, then we have got a $15 million bond there that is going to ensure that it is done right.

Mr. LEVITAS. Who is Chip Wood or Warren Wood?

Mr. PERRY. I believe he was Ms. Lavelle's assistant. He was the chief of staff to Ms. Lavelle.

Mr. LEVITAS. What else can you tell me about him?

Mr. PERRY. Prior to that time, I believe he was on the Administrator's staff.

Mr. LEVITAS. Did he ever work for you?

Mr. PERRY. No, sir.

Mr. LEVITAS. Did he ever work for or work with Mr. Sanderson?

Mr. PERRY. I really don't know whether he ever worked with or for Mr. Sanderson.

Mr. LEVITAS. Do you recall where and when you first met Mr. Wood?

Mr. PERRY. Yes, sir. It was at a staff meeting in the Administrator's office.

Mr. LEVITAS. Do you know how Mr. Wood became Ms. Lavelle's chief of staff?

Mr. PERRY. No, sir, I sure don't.

Mr. LEVITAS. Did Mr. Wood ever discuss that with you?

Mr. PERRY. No, sir.

Mr. LEVITAS. Have you spoken to Mr. Wood recently in the last couple of weeks?

Mr. PERRY. No, sir.

Mr. LEVITAS. Have you ever met with Mr. Wood and discussed Superfund matters?

Mr. PERRY. No, sir. He could have been seen at a meeting maybe with Ms. Lavelle and myself at one time, but I don't believe he really got involved in the day-to-day activities. But that doesn't mean he could not have been in and out of the office.

Mr. LEVITAS. I notice a meeting on August 21, 1981, with a Chip Wood. Do you know why?

Mr. PERRY. Yes, sir. That was probably when he was working with the administrator on a project. He was not with Ms. Lavelle then. He was with the administrative staff.

Mr. LEVITAS. March 8, 1982, you met with Mr. Wood, Chip Wood. On April 18, you met with Mr. Wood. On Tuesday, June 8, you met twice with Mr. Wood.

Mr. PERRY. Yes.

Mr. LEVITAS. Do you recall what those meetings were?

Mr. PERRY. Those were probably on staffing, organizational structure.

Mr. LEVITAS. All right. I thank you.

At this time, I will recognize Mr. Molinari.

Mr. MOLINARI. Mr. Perry, I asked you before about your telephone logs and you indicated that you furnished a copy to this committee.

Mr. PERRY. I am not sure.

Mr. MOLINARI. I just want to bring it to your attention that I don't think that is correct. I think you furnished it to Mr. Dingell's committee, Energy and Commerce, and I would like you to forward a copy to this subcommittee.

Mr. PERRY. I would be very happy to.

Mr. MOLINARI. I would like to ask you some questions on the Chem-Dyne facility. I hesitate to ask those questions, though, if indeed we might be in a position where we might prejudice any action that is pending at the present time.

Will you be able to let me know what position we are in with respect to that site and whether I can pursue such questions?

Mr. PERRY. This is with regard to the pending lawsuit?

Mr. MOLINARI. It is with regard to the cleanup of the Chem-Dyne site.

Mr. PERRY. Yes, sir. I will be glad to alert you if we are getting into an area that is sensitive.

Mr. MOLINARI. There was a decision reached apparently in the fall of last year not to remove the waste from the tanks on site but to defer removal to March 1983. Are you familiar with that?

Mr. PERRY. No, sir, I am not familiar. I do know weather must have played some role but I am not familiar at all with the merits of the cleanup or the technical operations or the cleanup plan or the feasibility study and things like that.

Mr. MOLINARI. I have a statement here indicating that there were serious concerns raised by your management consultants in a letter sent to Mr. Brad Wright. And it says, "It is unfortunate that a decision was not made earlier to remove the waste from the tanks during the summer. I cannot help but think that the Agency is putting itself into a precarious position by waiting until next spring."

Am I OK so far, as far as sensitivity is concerned?

Mr. PERRY. Yes, sir, but again you are getting a little beyond my expertise.

Mr. MOLINARI. There are a lot of people with you today. I assume there is somebody here who can answer these questions?

Mr. PERRY. We will go ahead. We will see if we can find someone.

Mr. MOLINARI. Can you imagine the public outburst if a tank ruptures, especially one containing PCB's? How would the Agency respond if it lacked the support data indicating that waiting until spring did not pose a substantial risk? Furthermore, what does this do to our legal posture if we say in May that the site is an imminent and substantial endangerment to health and the environment and 5 months later are willing to postpone cleanup until March of 1983?

I can't imagine that it does anything but weaken our posture in future settlement negotiations.

Mr. PERRY. Mr. Molinari, I think we are getting involved in an enforcement sensitive area here that could affect the litigation.

Mr. MOLINARI. In that case I will not question you any further on that but will save my questions for our executive session.

Mr. PERRY. Yes, sir.

Mr. MOLINARI. Mr. Chairman, are you intending to come back after the vote?

Mr. LEVITAS. Yes, sir.

Mr. MOLINARI. In that case I will defer to the chairman.

Mr. LEVITAS. I think that we will go record this quorum and then return right away and get back into this. The subcommittee will stand in recess.

[Recess.]

Mr. LEVITAS. Mr. Perry, in light of the information that I received, it seems like the suggestion I made at the beginning of our proceedings today about perhaps eliminating some of those middle steps in the production of documents has now been consummated in that we will be able to eliminate those middle steps and get the documents.

Do you know anything about that?

Mr. PERRY. No, sir, not right now but I will sure find out as soon as I can do so.

Mr. LEVITAS. Also there is a report that I just heard from one of the wire services that Mrs. Burford may be resigning tonight. Do you know anything about that?

Mr. PERRY. No, sir. I have been here all afternoon, so there would be no way for me to know.

Mr. LEVITAS. I just hoped we might expedite matters, if that were the case.

Mr. Molinari?

Mr. MOLINARI. We have touched on the question of political influence from time to time and it was again discussed today. On the Seymour site there was a request for expedited cleanup activity prior to November 1982. Can you enlighten me as to what knowledge you might have about that request?

Mr. PERRY. I don't have any personal knowledge but let me check with one of my staff.

Mr. MOLINARI. Please do.

Mr. PERRY. Mr. Molinari, I do not have and neither does my staff, any knowledge of what you just referred to.

Mr. MOLINARI. Let me go further, maybe it will strike a bell. I am looking at a memorandum from Richard Bartlett, who is the region 5 Superfund Coordinator, right?

Mr. PERRY. He would not be in my office. He is part of the technical program staff. He would not be in my legal office.

Mr. MOLINARI. I understand that. He works out of the regional office which would be Chicago, right?

Mr. PERRY. Yes, sir, apparently so.

Mr. MOLINARI. I have been advised that the White House has just made an announcement that Mrs. Burford has resigned, Mr. Perry.

Mr. PERRY. Is that correct?

Mr. MOLINARI. Do you think there is any purpose served in our going forward with the questioning here tonight?

Mr. PERRY. Well, I am indeed saddened to hear that Mrs. Burford has resigned, I really am, if that's true.

Mr. MOLINARI. I will defer to the chairman at this point.

Mr. LEVITAS. I just received word from my office that there was an announcement on television from the White House that the Administrator had resigned and I believe that Dr. Hernandez has been appointed interim or acting administrator until other arrangements are made.

Mr. MOLINARI. Then let us get back to the question on Seymour. This memorandum goes on to summarize the situation by stating that it is doubtful that construction can be initiated prior to November 1982 and that the procurement process may be under way by that time.

Now, is there anybody with you who has any awareness as to the significance of this date because it does happen to be at election time.

Mr. YAMADA. Sir, they don't recall but I might add that the Seymour case and its possibility of being involved in any political ramification has been referred to the Department of Justice.

Mr. MOLINARI. OK. I will not question you any further.

Mr. YAMADA. Yes, sir.

Mr. MOLINARI. Let me ask you this question, Mr. Perry. With respect to Chem-Dyne, when you learned that Exxon was involved you, in effect, stepped out of the picture, as I understand it by recusing yourself.

Mr. PERRY. That is correct.

Mr. MOLINARI. Now, Exxon being the company that it is, I would assume that it is involved in more than 1 out of the 419 sites. Would that be a fair statement?

Mr. PERRY. They are a pretty good corporate citizen and I would say they have a remarkable environmental record but there is no doubt they are involved in a lot of sites.

Mr. MOLINARI. I am sure they are a good corporate citizen. I am sure you would not have worked for them if they were not, Mr. Perry.

Let me ask you this. Since they are so big and since we have 170 some-odd generators involved in one site, it would seem to me that the likelihood of Exxon being involved would be very real. What would your position be if you knew that Exxon was involved in one of the matters pending before you?

Mr. PERRY. I would recuse myself totally in that case and assign it to either Mr. Yamada or to Mr. Brown and I have done that since I have been with the Agency and indeed I have got a recusal letter on file.

Mr. MOLINARI. How many times have you done that?

Mr. PERRY. Recused myself from cases?

Mr. MOLINARI. Yes, sir.

Mr. PERRY. Just a guess, three or four times.

Mr. MOLINARI. For the record, could you tell us what cases?

Mr. PERRY. I would like to give you an accurate report and supply it for the record after I make a check of the docket. I just cannot guess right now. There have been several cases.

Mr. MOLINARI. I am certainly willing to accept that. Could you, though, for the time being recollect any cases other than Chem-Dyne where you did so?

Mr. PERRY. Yes, sir. There have been a couple where the American Petroleum Institute has been involved where Exxon was named a plaintiff and there have been several. I could give you an accurate report after I get back to the office and look at the docket.

Mr. **Molinari**. Very well.

[The information received from Mr. Perry follows:]

Attachment C

[illegible]

#13(a)

14 OCT 1982

**MEMORANDUM**

SUBJECT: Recusal from Participation in Any Agency Action Regarding U.S. v. Petro Processors of Louisiana Inc., et al., Civil Action No. 80-358-B, U.S. District Court, Middle District of Louisiana

COPY ORIGINAL SIGNED ROBERT M. PERRY

FROM: Robert M. Perry
Associate Administrator

TO: The Administrator

Because of the potential for, or the appearance of, a conflict of interest due to my former employment with Exxon Corporation, a defendant in the above-referenced matter, I am recusing myself from participating in any Agency decisions regarding the Petro Processors litigation in Baton Rouge, Louisiana.

I hereby designate Michael A. Brown to act in my place regarding this case.

cc: Rita Lavelle, OSWER
Michael A. Brown, OEC
Stephen Ramsey, DOJ
Dick Whittington, Region 6
Paul Seals, Regional Counsel - Region 6

~~Item 11(a)~~

# 13(b)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

8 NOV 1982

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

**MEMORANDUM**

**SUBJECT:** Recusal From Consideration of New Bedford, Massachusetts PCB Referral

**FROM:** Robert M. Perry Robert M. Perry
Associate Administrator
and General Counsel

**TO:** The Administrator

Because of the potential for, or the appearance of, a conflict of interest due to my former employment with Exxon Corporation, a potential defendant or owner of a potential defendant in the above-referenced matter, I am hereby recusing myself from any consideration of the Region I case involving the New Bedford, Massachusetts harbor PCB contamination.

Michael Brown previously had recused himself from this case because of a potential conflict of interest that he has, and I therefore am designating Gerald H. Yamada, Associate General Counsel, to have all authority concerning the case that would normally be exercised by Mike Brown or myself.

cc: Steve Ramsey, DOJ
Rita Lavelle, OSWER
Lester Sutton, Region I
Mike Brown, OEC
Ed Kurent, OEC-Waste
Leslie Carothers, Acting Regional Counsel, Region I
✓Gerald H. Yamada, OGC

Attachment D

#13(c)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

1 MAR 1983

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

MEMORANDUM

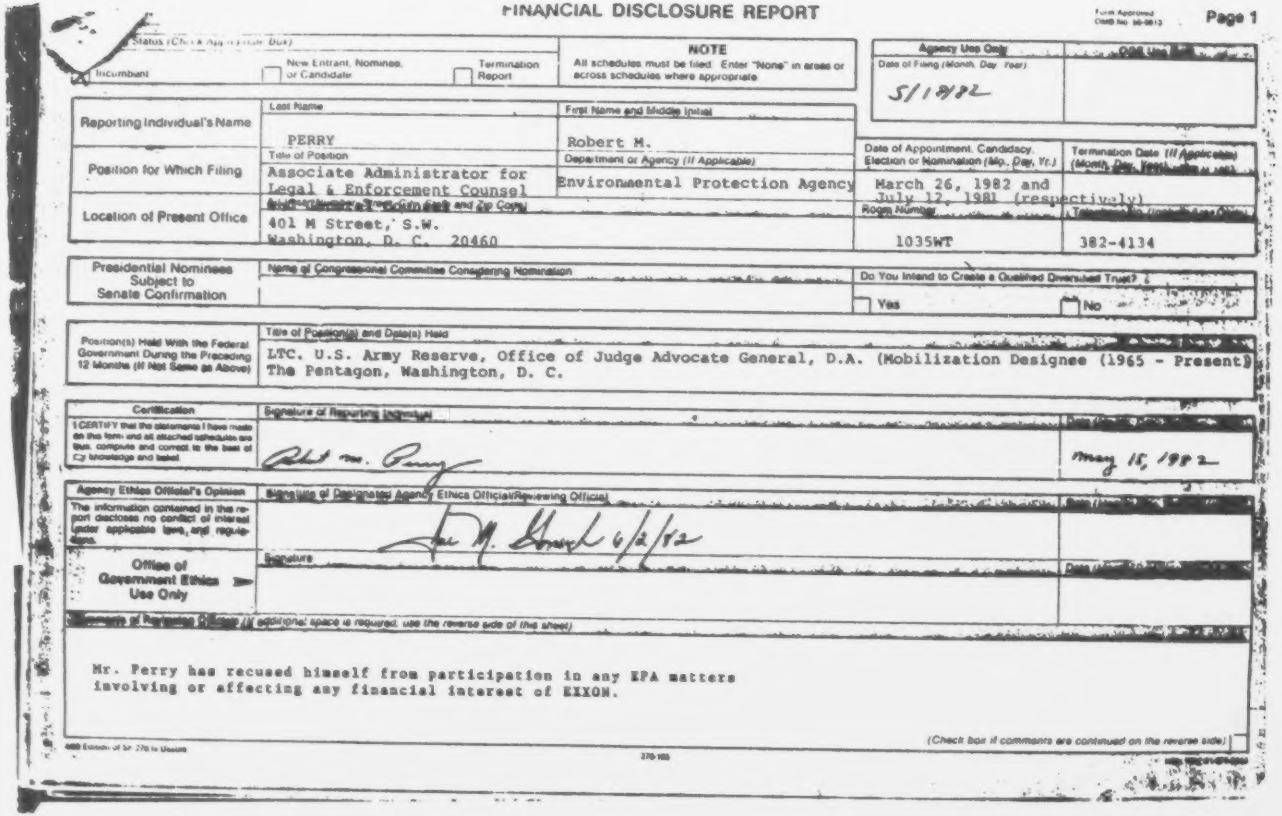
SUBJECT: Legal Challenge to the Agency's Recently Promulgated Effluent Limitations Guidelines and Standards for the Petroleum Refining Industry

FROM: Robert M. Perry Robert M. Perry
Associate Administrator and General Counsel

TO: Bruce M. Diamond
Acting Associate General Counsel
Water Division (A-131)

You have advised me that the American Petroleum Institute ("API") has intervened in the legal challenge brought by Natural Resources Defense Council ("NRDC") in the Court of Appeals for the District of Columbia Circuit to the Agency's recently promulgated effluent limitations guidelines and standards for the petroleum refining industry (47 Fed. Reg. 46434). NRDC v. EPA, C.A. No. 83-1122 (D.C. Cir.). I am aware that Exxon is a member of API. In order to avoid even the slightest possibility of an appearance of impropriety, I am recusing myself from this matter and am appointing Gerald Yamada, Acting Deputy General Counsel, to act in my stead.

cc: Gerald Yamada



# FINANCIAL DISCLOSURE REPORT

Form Approved
OMB No. 50-0813

Page 1

Status (Check Appropriate Box)
☑ Incumbent ☐ New Entrant, Nominee, or Candidate ☐ Termination Report

**NOTE**
All schedules must be filed. Enter "None" in areas or across schedules where appropriate.

Agency Use Only
Date of Filing (Month, Day, Year): 5/18/82

OGE Use Only

| | | |
|---|---|---|
| Reporting Individual's Name | Last Name<br>PERRY | First Name and Middle Initial<br>Robert M. |
| Position for Which Filing | Title of Position<br>Associate Administrator for Legal & Enforcement Counsel | Department or Agency (If Applicable)<br>Environmental Protection Agency |
| Location of Present Office | Address (Number, Street, City, State and Zip Code)<br>401 M Street, S.W.<br>Washington, D. C. 20460 | |

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.): March 26, 1982 and July 12, 1981 (respectively)

Termination Date (If Applicable) (Month, Day, Year):

Room Number: 1035WT

Telephone No.: 382-4134

Presidential Nominees Subject to Senate Confirmation
Name of Congressional Committee Considering Nomination:
Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☐ No

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)
Title of Position(s) and Date(s) Held: LTC. U.S. Army Reserve, Office of Judge Advocate General, D.A. (Mobilization Designee (1965 - Present)) The Pentagon, Washington, D. C.

Certification
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.
Signature of Reporting Individual: Robt M. Perry
Date: May 15, 1982

Agency Ethics Official's Opinion
The information contained in this report discloses no conflict of interest under applicable laws and regulations.
Signature of Designated Agency Ethics Official/Reviewing Official: 6/2/82
Date:

Office of Government Ethics Use Only
Signature:
Date:

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Mr. Perry has recused himself from participation in any EPA matters involving or affecting any financial interest of EXXON.

(Check box if comments are continued on the reverse side) ☐

Edition of SF 278 is Obsolete

278-103

[illegible]

#13(e)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

March 9, 1983

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

**MEMORANDUM**

SUBJECT: Any Particular Matter Involving Exxon Corporation

FROM: Robert M. Perry Robert M. Perry
Associate Administrator and General Counsel

TO: OLEC Attorneys

To avoid any appearance of a conflict of interest you should specifically and immediately bring to my attention any particular matter before EPA which involves Exxon Corporation or a subsidiary of Exxon Corporation.

I have recused myself from participation in any particular EPA matter involving Exxon Corporation or a subsidiary of Exxon Corporation. The Enforcement Counsel and Acting Deputy General Counsel are delegated responsibility to act on behalf of this office in their respective areas of responsibilities.

cc: Office of Government Ethics

Mr. MOLINARI. Mr. Perry, there has been a newspaper story, about an EPA official who was accused of destroying appointment calendars and was told to destroy them by EPA lawyers. It was Mr. Todhunter as I recall.

Are you aware of any advice that was given by yourself or any member of your staff to EPA officials in that connection?

Mr. PERRY. I am not aware of any advice given by myself or my staff. I had Mr. Yamada check that out this morning and he informed me or Richard Mays informed me that in all probability it could have been an attorney or Mr. Todhunter's staff.

Now, insofar as calendars are concerned and telephone logs, I don't think there is any law that requires you to keep them. The primary thing here is, and I think the main concern of this committee is that these documents not be destroyed, especially if they are under subpoena and absolutely, even though there is no law, once a subpoena or you make it known that you would like to have those——

Mr. MOLINARI. There is no question about that. It just seems rather unusual if people working there were advised to rip up their diary month by month so that there is no record around. I think we both would agree that that would be kind of an inappropriate action, would you not say?

Let me ask you two more questions.

Over a year ago the enforcement office announced that it was instituting an audit program and an evidence program to insure the quality of cases. Is that program in place today?

Mr. PERRY. I believe that was done by our National Enforcement Investigation Center and they were looking at the chain of custody evidenced to be sure that when our technical people went out and inspected the site that the hazardous waste that was identified at the site and the chain of custody was not encumbered or in any way castigated, so it would be available for use for trial.

And I think the NEIC did a real fine job.

Mr. MOLINARI. I am looking for an answer. Do you know if it was implemented?

Mr. PERRY. Yes, sir.

Mr. MOLINARI. It was implemented and is in place today?

Mr. PERRY. Yes, sir, it is.

Mr. MOLINARI. One last question. We have been here a long time today and I have heard a lot of your ideas. Having worked with Superfund, what recommendations would you propose now as far as legislative changes are concerned to make the enforcement of Superfund more effective?

Mr. PERRY. That is a very thought-provoking question and I feel honored that you asked me.

As I mentioned earlier, I think that we have a lot of good enforcement tools in the current statute.

Mr. MOLINARI. Excuse me, Mr. Perry. Because of the time constraints I would like to ask you if you could submit those recommendations in writing. I think it would be better anyhow for our sake. I would be very pleased to receive them because I think legislative changes are something we have to look at. Now, I would like to defer to the chairman.

Thank you.

Mr. **Levitas**. Thank you very much, Mr. Molinari. And Mr. Perry, I want to join in Mr. Molinari's request. I think it would be extremely helpful to this committee in discharging its primary purpose which is to provide oversight for the program to see what improvements might be made both in the law and in the administration of the law to have the benefit of your thoughts and experiences in this regard.

Mr. **Perry**. I appreciate that very much, sir.

[Note: Mr. Perry left the U.S. EPA prior to responding to this last matter.]

Mr. **Levitas**. Mr. Perry, I have several other questions which may not be relevant now under the circumstances and I think it would perhaps be more appropriate simply to conclude this day's hearings on the matter.

At this point I want to thank you and Mr. Yamada and Mr. Mays, all of you for participating. It has been a very interesting hearing today. I am sure you would like to get back to the office and find out what is going on there.

Mr. **Perry**. Yes, sir.

Mr. **Levitas**. If you would supply for us the items we have asked for as expeditiously as possible, it would enable us to get on with some of the other things that we have got here.

Again, thank you very much. I appreciate your being here today.

The subcommittee stands adjourned subject to the call of the Chair.

[Whereupon, at 7:10 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

○